

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – JULY 16, 2003**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 5:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members Carr, Sellers, Tate and Mayor Kennedy  
Late: Mayor Pro Tempore Chang (arrived at 5:13 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**CLOSED SESSIONS:**

City Attorney Leichter announced the below listed closed session item:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Legal Authority:	Government Code Section 54965.9(a)
Case Name:	Morgan Hill Unified School District v. Minter & Fahy
Case No.:	Santa Clara County Superior Court, No. CV 772368
Attendees:	City Council, City Manager, City Attorney, Mark Strombotne, Special Counsel

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to Closed Session at 5:03 p.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 7:00 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Manager Tewes announced that no reportable action was taken in closed session and that the closed session item was continued to the conclusion of the Joint Special/Regular City Council and Special Redevelopment Agency meeting agenda.

**RECONVENE TO CLOSED SESSION**

Mayor Kennedy reconvened to Closed Session at 11:43 p.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 11:56 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 11:57 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – JULY 28, 2003**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 5:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members: Carr, Tate and Mayor Kennedy  
Late: Council Member Sellers (arrived at 5:04 p.m.) and Mayor Pro Tempore Chang (arrived at 5:07 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**CLOSED SESSION:**

City Attorney Leichter announced the below listed closed session item.

1.

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Government Code Section 54956.9(a)  
Bob Lynch Ford, Inc., and Scott Lynch v. Timothy Paulus et al.; Santa Clara Superior Court Case No. CV001657

2.

**PUBLIC EMPLOYEE EVALUATION**

City Attorney

3.

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Government Code Section 54956.9(b)  
Number of Cases - 1

4.

**CONFERENCE WITH LABOR NEGOTIATOR**

Authority:	Government Code Section 54957.6
Agency Negotiators:	City Manager, City Attorney, Human Resources Director
Employee Organization:	Morgan Hill Police Officers Association

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to Closed Session at 5:02 p.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 7:15 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that the City Council authorized the City to defend in the case of Bob Lynch Ford, Inc., and Scott Lynch v. Timothy Paulus et al.; Santa Clara Superior Court Case No. CV001657

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 7:16 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – AUGUST 1, 2003**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 8:32 a.m.

**ROLL CALL ATTENDANCE**

Present: Council Members: Carr, Chang, Sellers, Tate and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**CLOSED SESSION:**

City Attorney Leichter announced the below listed closed session items.

1.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

2.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Attorney

Attendees: City Council, City Attorney

3.

**CONFERENCE WITH LABOR NEGOTIATOR**

Authority: Government Code Section 54957.6

Agency Negotiators: City Manager, City Attorney, Human Resources Director

Employee Organization: Morgan Hill Police Officers Association

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to Closed Session at 8:34 a.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 2:01 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor Kennedy announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 2:02 p.m.

**MINUTES PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**

**CITY OF MORGAN HILL  
SPECIAL CITY COUNCIL MEETING  
MINUTES – AUGUST 1, 2003**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 9:00 a.m.

**ROLL CALL ATTENDANCE**

Present: Council Members: Carr, Chang, Sellers, Tate and Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**CLOSED SESSION:**

Mayor Kennedy announced the below listed closed session item.

**1.**

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 1

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to Closed Session at 9:02 a.m.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 2:01 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor Kennedy announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 2:02 p.m.

**MINUTES PREPARED BY:**

**IRMA TORREZ, CITY CLERK**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: AUGUST 20, 2003***

**TITLE: PERFORMANCE MEASURE UPDATE – FISCAL  
YEAR 2002/03**

**RECOMMENDED ACTION:  
Receive and file**

### **EXECUTIVE SUMMARY:**

The City implemented Performance Measures into the FY 2002/03 Operating and Capital Budget. Performance measures provide a framework for the strategic planning, City workplan, and goal-setting processes, serve as a tool for communicating organizational performance, and provide a structured approach for linking budget decisions to public priorities.

On a quarterly basis, staff is presenting Performance Measure Updates to the City Council. Attachment A is the update for the fourth quarter of FY 2002/03, which gives the City its first full year of actual measurements.

**FISCAL IMPACT:**  
None.

Agenda Item #23

Prepared By:

*Chu Thai*

Chu Thai

Approved By:

Finance Director

Submitted By:

City Manager

<b>06/30/03 Update</b> Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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<b>[010-1100] CITY COUNCIL</b>				Responsibility: City Clerk's Office
Council/Redevelopment Agency Meeting Minutes produced	51	66	86	
Percentage of Minutes completed without errors of fact	100%	98%	98%	
Completing Minutes within 2 weeks	100%	100%	100%	

<b>[010-1220] COMMUNITY PROMOTIONS</b>				Responsibility: City Clerk's Office
Proclamations Produced	50	150	190	
Staff time to coordinate/draft requests for proclamations for Council members, staff and outside requests	1.5 hours	1.5 hours	1.5 hours	
Hours to produce all proclamations	75 hours	225 hours	285 hours	
Percentage of Proclamations completed for a particular meeting date, as requested	100%	100%	100%	

<b>010-2410] COUNCIL SERVICES &amp; RECORDS MANAGEMENT</b>				Responsibility: City Clerk's Office
Number of requests for public records	661	800	895	
Amount of time to research/copy request for public records	77% in one day 20% in 10 days 3% in 10+ days	86.7% 11.7% 1.6%	86.7% 11.8% 1.5%	

<b>[010-2420] ELECTIONS DIVISION</b>				Responsibility: City Clerk's Office
Number of Statement of Economic Interests filed	95	108	108	
Percentage filed by deadline	93%	99%	99%	
Percentage filed late	7%	1%	1%	

<b>[010-1500] CITY ATTORNEY</b>				Responsibility: City Attorney's Office
Standard contracts reviewed within ten days	100%	100%	100%	
Amended Municipal Chapter Codes adopted by the City	100%	100%	100%	
Hours of MCLE	10	10	26	
Closure of more than 50% of defense cases under \$75,000 in legal fees	100%	100%	100%	

<b>06/30/03 Update</b> Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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<b>[010-2100] CITY MANAGER</b>				Responsibility: City Manager's Office
Percentage of workplan projects, City-wide, that are completed within the planned time frame	29%	44%	35%	
Actual General Fund expenditures as a percentage of the adopted General Fund budget	91.8%	44%	93%	
Level of City General Fund reserves as a proportion of adopted General Fund budget	71.1%	44%	64%	

<b>[010-5140] CABLE TELEVISION</b>				Responsibility: City Manager's Office
Number of cable complaints received	18	10	12	
Number of cable complaint processes completed	18	9	12	
Average number of days taken to completely process each cable complaint	Unavailable	1.7	10.67	

<b>[010-5145] COMMUNICATIONS AND MARKETING</b>				Responsibility: City Manager's Office
Pages of City Visions produced	62	48	72	
Dollars (not inclusive of staffing) spent on producing City Visions.	\$53,848	\$40,629	\$57,364	
Dollars per page of City Visions produced and distributed.	\$869	\$846.44	\$796.72	

<b>[232-5800] SOLID WASTE MANAGEMENT DIVISION</b>				Responsibility: City Manager's Office
Dollars spent communicating recycling information (excluding employee services)	\$59,948	\$60,788	\$87,044	
Tons of recycling collected	8243	6,499	8,992	
Number of environmental promotions distributed	11	12	10	
Percentage of customers ranking their solid waste management services "good" or "excellent"	93	N/A	N/A	
Percentage of customers who say they have enough information to properly participate in the City's recycling program	92	N/A	N/A	
Percentage of customers participating in the recycling program	62	62.76%	63.31%	
Solid waste diversion rate	53%	47%	47%	
Dollars spent communicating recycling information / tons of recycling collected	7.27	\$9.35	\$9.68	

06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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[010-2110] RECREATION DIVISION			Responsibility: Recreation and Community Services Division	
Overall cost of staff time to develop Recreation Guide, recruit instructors, negotiate contracts	\$15,015	\$18,325	\$37,921.25	Includes Fall 2002 & Winter/Spring 2003 Recreation class sessions
Overall cost produce and advertise recreation classes	\$1,620.17	\$4,394	\$9,064	Includes Winter/Spring 2003 and Summer 2003 Recreation Guides
Number of participants	1,466	1,304	2,171	
Percent of increase/decrease of customer satisfaction from prior year	N/A	N/A	N/A	
Cost per participant to produce Recreation Guide	\$11.35	\$14.00	\$4.17	

[010-2200] HUMAN RESOURCES OFFICE			Responsibility: Human Resources Department	
Cost of providing 24 hours of enhanced training (beyond legal requirements) to each employee per year (est. \$250 per employee)	\$9,711	\$26,110	\$37,307	
Number of recruitment processes which include selection criteria such as: flexibility, change management, attitude to work, fit for the organization, etc., in addition to the task requirements of the position	13 out of 26 recruitments	2 of 2	4 of 4	
Number of employees recognized for exemplary customer service, new ways of accomplishing work, successful cost reducing ideas, years of service.	25	72	125	
Number of HR staff hours spent in training, communicating and consulting to the number of HR staff hours spent recruiting to fill vacant positions.	1 to 4	3.5 to 4	3.5 to 4	
Cost to recruit and hire a new employee	\$3,800	\$2,500	\$2,500	

[010-2210] VOLUNTEER SERVICES PROGRAM			Responsibility: Human Resources Department	
Number of external requests for municipal volunteer opportunities to number of actual placements	75 to 15 20%	27 to 8 30%	50 to 18	
Number of internal requests for volunteers to number of actual placements.	10 to 9 90%	6 to 5 83%	12 to 11	

06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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[770-8220] WORKERS COMPENSATION INSURANCE				Responsibility: Human Resources Department
Number of workers' compensation claims involving temporary disability benefits	7	1	9	
Number of lost work days caused by temporary disability	841	545	738.5	
Average length of time to bring an injured employee off temporary disability	120	90.8	74	

[010-2510] FINANCE				Responsibility: Finance Department
Staff hours designated for Accounts Payable	1,800 hours (est.)	1,500 hours	2,000 hours	
Invoices processed	13,885 (est.)	10,547	13,871	
% of invoices paid by due date	91% (est.)	86%	86%	
Average time to process an invoice	7.71 minutes (est.)	8.53 minutes	8.66 minutes	

[650-5750] UTILITY BILLING – SEWER & WATER				Responsibility: Finance Department
Staff hours designated to Utility Billing	4,168	3,375	4,168	
Bills processed per year	132,228	99,580	134,270	
Percent sent out error free	99.96%	95.88%	96.9%	
Average time to process a bill	1.89 minutes	2.03 minutes	1.87 minutes	

[795-8210] GENERAL LIABILITY INSURANCE				Responsibility: Finance Department
Percent of claims responded to within the statutory time frame of 45 days, either through a rejection of the claim or through a proposed resolution.	78%	100%	97%	

[010-3205] POLICE ADMINISTRATION				Responsibility: Police Department
Hours spent processing citizens' complaints regarding police services.	N/A	75.85 hours (26 complaints)	100.85 hours (31 complaints)	
Percentage of formal citizens' complaints resolved within 30 days of receipt.	N/A	38%	50%	
Percent of sworn personnel who receive 24 hours of Continued Proficiency Training	61%	33%	42%	
Deficiencies reported in the annual POST audit	03/22/0 13 sworn	0	0	

06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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[010-3210] POLICE PATROL OPERATIONS				Responsibility: Police Department
Number of hours of directed patrol targeting vehicle burglaries.	N/A	828	1,104	
Number of self initiated contacts compared to calls for service.	SI - 16,637 CFS - 33,536	SI - 12,034 CFS - 21,396	SI - 15,363 CFS - 25,668	
Vehicle burglary incident reports.	229	167	198	
Percent of clearance in Part I and Part II crime rates for Morgan Hill as compared to regional cities the national rate.	MH 18% National 21%	MH 16% National 21%	MH 13% National 21%	
Percent of Priority I calls responded to within 5 minutes of receipt.	100%	100%	100%	
Number of fatal or injury collisions to the hazardous citations issued.	N/A	0 fatal / 20 injuries / 757cites	0 fatal/21 inj/943 cites	

[010-3225] POLICE SUPPORT SERVICES				Responsibility: Police Department
Hours dedicated to the property/evidence function.	35 hours/week	35 Hours/week	35 hours/week	
Percent of property/evidence released or purged within 30 days of clearance.	Annual Average 80%	100%	100%	
Percent of arrests entered into CJIC within 48 business hours of arrest date.	Annual Average 95%	100%	100%	
Incident reports stored electronically.	100%	3,922	5,184	

[010-3230] EMERGENCY SERVICES UNIT				Responsibility: Police Department
Hours of preparedness presentations given to the community.	N/A	176 hours	176 hours	
Number of organized CERT teams capable of operating within the City.	N/A	5 teams of 15-25 members	6 teams of 15-25 members	
Emergency drills/exercises completed.	N/A	3	3	
Percent of the disaster plan updated annually.	N/A	2 new additions	2 new additions	

[010-3245] POLICE SPECIAL OPERATIONS				Responsibility: Police Department
Investigations assigned to Special Operations.	N/A	170	190	
Incidents investigated by division personnel submitted to the District Attorney's Office requesting the issuance of a criminal complaint.	N/A	68	75	

<b>06/30/03 Update</b>	<b>Actual Result for 2001-02</b>	<b>Status of measure as of 3/31/02</b>	<b>Status of measure as of 06/30/03 (Cumulative)</b>	<b>Explanatory Comments (as needed)</b>
<b>Performance Measure</b>				

<b>[010-5450] ANIMAL CONTROL SERVICES UNIT</b>				<b>Responsibility: Police Department</b>
Hours spent to enforce animal license provisions of State law and local ordinance.	8 hours/day	8 Hours/day	8 hours/day	
Animal licenses issued to Morgan Hill residents	2,978	678	1,128	
Impounded animals in Morgan Hill returned to their owners within 4 days of impound	N/A	19	32	
Number of unlicensed dogs impounded or owners cited to the number of licensed dogs	24/2,978	93/673	135/1,123	

<b>[010-8270] POLICE DISPATCH SERVICES</b>				<b>Responsibility: Police Department</b>
911 calls received	8,400	4,955	6,500	
Average time to answer 98% of 911 phone calls	11 seconds	11 seconds	11 seconds (30% less than 5 seconds)	
Average time between when a Priority I call is answered and a unit is dispatched.	N/A	1:47	1:62	
Percent of data entry of incident reports completed within 7 days of report conclusion.	98%	100%	100%	

<b>[206-5120] PLANNING</b>				<b>Responsibility: Community Development Department</b>
Number and percent of SR Applications processed within 90 days (excluding CEQA projects requiring initial study or EIR)	16 applications; 3 incomplete 92%	21 applications: 7 incomplete, 12 completed within 90 days of application, 2 went before ARB within 90 days of app. = 100%	32 applications: 7 incomplete, xx completed within 90 days of application, 2 went before ARB within 90 days of app. = 100%	
Number of applications filed which require Architecture Review Board, Planning Commission or City Council approval	144	168	219	
Percent of RDCS Projects provided 30-day notice of default or expiration of allotment	70%	98%	99%	
Number of applications (which require ARB, PC or CC approval) processed per planner	Senior – 49 Assoc – 59 Asst – 18 Staff – 18	Senior – 48 Assoc – 43 Asst – 31 Staff – 46	Senior – 65 Assoc – 56 Asst – 44 Staff – 54	
Percent of DRC comments received on time	80%	85%	85%	

06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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[206-5130] BUILDING DIVISION			Responsibility: Community Development Department	
Percentage of inspections accomplished within a 24 hour response timeline	88%	98%	100%	
Total number of complaints and cases processed	404	263	210	
Number of Code Enforcement cases investigated or mitigated	375	354	188	
Percent of Code Enforcement cases completed and closed	93%	70%	91.33%	

[010-5440] PUBLIC WORKS PARK MAINTENANCE			Responsibility: Public Works Department	
Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	4 Days 0	2 Days, 14 Hours 0	
Maintenance Cost per Acre	\$11,611/acre/year	Result recorded annually	\$14,136/acre/year	Result could change once final year-end numbers have been posted

[202-6100] PUBLIC WORKS STREET MAINTENANCE			Responsibility: Public Works Department	
Customer Work Order Response Time Non-Emergency Emergency	N/A N/A	4 Days 1.5 Hours	4 Days 1.5 Hours	
Miles of Roadside Weed Abatement	12 Curb Miles	3 Curb Miles	27.27 Curb Miles	
Tons of Debris Removed by Street Sweeping	290 Tons	309 Tons	423 Tons	

[206-5410] PUBLIC WORKS ENGINEERING			Responsibility: Public Works Department	
Number of Final Maps Recorded	12	13	16	
Number of Plan Checks returned on time	68/79	103/118	145/166	
Number of Planning/Building Division referrals received	76	95	127	
Hours spent inspecting public improvements constructed by private developers	2,790 hours	1,660 hours	2170	

[229-8351] PUBLIC WORKS LIGHTING & LANDSCAPE			Responsibility: Public Works Department	
Manage all sub-areas to reduce deficits in fund balances	48%	Result recorded annually	Fund deficit increase 6%	Fund deficit increased slightly due to high percentage of extra costs for unforeseen repair work



06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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[640-5900] PUBLIC WORKS SEWER OPERATIONS				Responsibility: Public Works Department
Customer Work Order Response Time				
Non-Emergency	N/A	1 Day	20 Hours	
Emergency	N/A	12 Minutes	12 Minutes	
Sewer Main Restrictions Cleared	20	16	29	

[650-5710] PUBLIC WORKS WATER OPERATIONS				Responsibility: Public Works Department
Customer Work Order Response Time				
Non-Emergency	N/A	17 Hours	21 Hours	
Emergency	N/A	24 Minutes	22 Minutes	

[650-5720] PUBLIC WORKS METER READING				Responsibility: Public Works Department
Customer Work Order Response Time				
Non-Emergency	N/A	18 Hours	18 Hours	
Emergency	N/A	14 Minutes	14 Minutes	
Fire Hydrant Maintenance Performed	65	287	414	
Water Meter Tested - 2" or Greater	64	0	20	
Annual Cost to Read a Meter	\$0.71	\$0.65	\$.59	Result could change once final year-end numbers have been posted

[650-5760] WATER CONSERVATION				Responsibility: Public Works Department
Cooperative efforts with Santa Clara Valley Water District to reduce water consumption	1	3	3	

[745-8280] PUBLIC WORKS CIP ADMINISTRATION				Responsibility: Public Works Department
Number of Engineering Division hours worked on all CIP Projects	8,000 hours <sup>1</sup>	8,350 hours	10,879	
Number of CIP projects awarded	10	8	17	
Percentage of CIP projects completed within Council approved contingency	100%	83%	90%	
Hours spent inspecting public improvements constructed as CIP projects	1,490 hours	2,846 hours	3303	

06/30/03 Update Performance Measure	Actual Result for 2001-02	Status of measure as of 3/31/02	Status of measure as of 06/30/03 (Cumulative)	Explanatory Comments (as needed)
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<b>[317-7000] BUSINESS ASSISTANCE – ADMINISTRATION</b>	Responsibility: Business Assistance and Housing Services Department
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Amount of value of building permits pulled for commercial tenant improvements	\$24mil	\$4.8 M	\$11.1 M	
Number of business provided Ombudsman services, sent information or met with by a BAHS representative	N/A	2,446	4,231	
Amount of square footage in building permits pulled for new commercial/industrial office space	100,000	115,865	227,381	
Amount of sales tax generated from new businesses	N/A	\$11,700	\$92,700	
Number of new businesses generating sales tax revenue	N/A	41	209	

<b>[327-7100] HOUSING</b>	Responsibility: Business Assistance and Housing Services Department
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Number of BMR refinance, Rental and Ownership application	214	284	358	
Number of refinancing request and BMR applications approved	135	242	291	
Number of BMR Rental occupied and BMR units sold	26	22	26	
Number of BMR applications received and approved per F.T.E. staffing for the program	134/FTE	202/FTE	250/FTE	



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

### **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) MICRO PROJECT COMPETITION SECOND YEAR PHASING REQUESTS**

#### **RECOMMENDED ACTION(S):**

Adopt Resolution approving second year phasing into Fiscal Year 2005-2006 for Projects in the 2002-03 Micro Project Competition.

#### **EXECUTIVE SUMMARY:**

Under Article III of Chapter 18.78 of the RDCS Ordinance, separate procedures have been established for evaluating smaller residential projects. An eligible "micro" project is any type of residential development consisting of six units or less in size on sites which represent the ultimate development potential of the property.

On April 22, 2003, the Planning Commission approved the award and distribution of building allocations for new micro projects for FY 2004-2005. The approved distribution is consistent with the guidelines established for the competition by the City Council in July 2002.

In accordance with Section 18.78.125 (F) of the Measure P ordinance, if an applicant desires approval of residential units in a single-residential development to be phased over more than one fiscal year, the applicant may apply to the City Council for such approval. The City Council may give such approval if it is demonstrated that the proposed project, if limited to one fiscal year, is not economically feasible because of the required off-site or other improvements required and other factors beyond the developer's control. The applicant shall be given the necessary additional allotment to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment in the next fiscal year. Applicants for the two projects awarded a building allotment in the micro project competition have requested their building allotment be phased over two fiscal years. The attached Planning Commission staff report dated April 8, 2003 outlines the recommended distribution for each fiscal year as approved by the Planning Commission. Staff and the Planning Commission recommend approval of the second year phasing requests by adoption of the attached Resolution.

#### **FISCAL IMPACT:**

No budget adjustment required.

**Agenda Item # 24**

**Prepared By:**

**Planning Manager**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING SECOND YEAR PHASING REQUESTS FOR PROJECTS AWARDED RESIDENTIAL DEVELOPMENT CONTROL SYSTEM ALLOTMENTS IN THE FISCAL YEAR 2004-05 MICRO COMPETITION.**

**WHEREAS**, the Planning Commission has received two micro project applications requesting residential building allotments pursuant to Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, pursuant to Resolution No.5594, the City Council has authorized allotments to be awarded to new residential projects in a Competition for Fiscal Year 2004-05; and

**WHEREAS**, on April 22, 2003, the Planning Commission adopted Resolution 03-23 approving the award and distribution of the micro project building allocations for Fiscal Year 2004-05; and

**WHEREAS**, the Planning Commission recommends that certain projects awarded a building allotment receive approval to phase a portion of their building allotment into the next fiscal year;

**WHEREAS**, pursuant to Section 18.78.125(f) of the Morgan Hill Municipal Code, the City Council has the authority to approve phasing of building allocations into the following fiscal year;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CITY OF MORGAN HILL THAT:**

**SECTION 1:** Pursuant to Section 18.78.125(F), the Council hereby approves the second year phasing of the new residential projects as set forth in the attached exhibit "A." The additional allocation awarded to these projects shall be subtracted from the limited allotment authorized under Measure P for the 2005-2006 Fiscal Year.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 20<sup>th</sup> Day of August, 2003, by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

## **☞ CERTIFICATION ☞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 20, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

EXHIBIT "A"

**SECOND YEAR PHASING FOR MICRO PROJECTS**

**Fiscal Year 2005-06**

MMP 03-01: Native Dancer-Quail Meadows	4
MMP 03-02: DeWitt-Marquez/Gluhaich	<u>1</u>
<b>Total</b>	5



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

### **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P) OPEN MARKET COMPETITION SECOND YEAR PHASING REQUESTS**

#### **RECOMMENDED ACTION(S):**

Adopt Resolution approving second year phasing into Fiscal Year 2005-2006 and FY 2006-2007 for Projects in the 2002-03 Open/Market Rate Competitions.

#### **EXECUTIVE SUMMARY:**

On May 27, 2003, the Planning Commission approved the award and distribution of building allocations for new open/market rate projects for FY 2004-2005 and FY 2005-06. The approved distributions are consistent with the guidelines established for the two competitions by the City Council in July 2002.

In accordance with Section 18.78.125 (F) of the Measure P ordinance, if an applicant desires approval of residential units in a single-residential development to be phased over more than one fiscal year, the applicant may apply to the City Council for such approval. The City Council may give such approval if it is demonstrated that the proposed project, if limited to one fiscal year, is not economically feasible because of the required off-site or other improvements required and other factors beyond the developer's control. The applicant shall be given the necessary additional allotment to complete the project in the next fiscal year; however, these additional allotments shall be considered a portion of the limited allotment in the next fiscal year. Applicants for six projects which were awarded a building allotment have requested it be phased over two fiscal years. The attached chart titled "2002-03 Open/Market Competition Approved Building Allotment" contains the distribution for each fiscal year as approved by the Planning Commission. Projects recommended to receive second year allocations are identified in the attached exhibit to the approval resolution titled "Second Year Phasing for Open/Market Rate Projects." Staff and the Planning Commission recommend approval of the second year phasing requests by adoption of the attached Resolution.

#### **FISCAL IMPACT:**

No budget adjustment required.

**Agenda Item # 25**

**Prepared By:**

**Planning Manager**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING SECOND YEAR PHASING REQUESTS FOR PROJECTS AWARDED RESIDENTIAL DEVELOPMENT CONTROL SYSTEM ALLOTMENTS IN THE FISCAL YEAR 2004-05 AND FISCAL YEAR 2005-06 OPEN/MARKET COMPETITIONS.**

**WHEREAS**, the Planning Commission has received twenty three applications requesting residential building allotments pursuant to Chapter 18.78 of the Morgan Hill Municipal Code; and

**WHEREAS**, pursuant to Resolution No.5594, the City Council has authorized allotments to be awarded to new residential projects in two separate Open/Market Competitions for the Fiscal Year 2004-05 and Fiscal Year 2005-06 building allotment; and

**WHEREAS**, on May 27, 2003, the Planning Commission adopted a Resolution approving the award and distribution of building allocations for Fiscal Year 2004-05 and Fiscal Year 2005-06; and

**WHEREAS**, the Planning Commission recommends that certain projects awarded a building allotment receive approval to phase a portion of their building allotment into the next fiscal year;

**WHEREAS**, pursuant to Section 18.78.125(f) of the Morgan Hill Municipal Code, the City Council has the authority to approve phasing of building allocations into the following fiscal year;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF CITY OF MORGAN HILL THAT:**

**SECTION 1:** Pursuant to Section 18.78.12(F), the Council hereby approves the second year phasing of the new open/market rate residential projects as set forth in the attached exhibit "A." The additional allocation awarded to these projects shall be subtracted from the limited allotment authorized under Measure P for the 2006-2007 Fiscal Year.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 20<sup>th</sup> Day of August, 2003, by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**🏛️ CERTIFICATION 🏛️**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 20, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



EXHIBIT "A"

**SECOND YEAR PHASING FOR OPEN/MARKET RATE PROJECTS**

**Fiscal Year 2005-2006**

<b>MP-02-20: Barrett – Ditri</b>	<b>9</b>	<b>(E)</b>
Total	<u>9</u>	

**Fiscal Year 2006-2007**

<b>MP-02-03: Tilton – Glenrock/Shea</b>	<b>20</b>	<b>(W)</b>
<b>MP-02-07: Cory – San Pedro Partners</b>	<b>8</b>	<b>(E)</b>
<b>MP-02-12: Peet – Lupine Investors</b>	<b>12</b>	<b>(E)</b>
<b>MP-02-14: Cochrane – Coyote Estates</b>	<b>8</b>	<b>(E)</b>
<b>MP-02-15: Mission View – Mission Ranch</b>	<b>12</b>	<b>(E)</b>
Total	<u>60</u>	

\* East (E)/West (W) Distribution

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – JULY 16, 2003**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the special meeting to order at 5:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairperson Kennedy  
Late: Mayor Pro Tempore/Vice-chair Chang (arrived at 5:13 p.m.)

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 5

**2.**

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 5:03 p.m.

## **RECONVENE**

Mayor/Chairperson Kennedy reconvened the meeting at 7:00 p.m.

## **CLOSED SESSION ANNOUNCEMENT**

City Manager Tewes announced that no reportable action was taken in closed session and that the closed session items were continued to the conclusion of the meeting.

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairperson Kennedy, John Dossetti led the Pledge of Allegiance.

## **CITY COUNCIL REPORT**

Council Member Tate stated that the Economic Development Subcommittee met last week and that one of the items reviewed was the Request for Proposal (RFP) that would be going out, soliciting interest in the downtown for \$3 million (\$1 million for economic development; \$1 million for housing; and \$1 million to be used for infrastructure). The Subcommittee would like to report that it is important for anyone interested in developing in the downtown that they get involved in the RFP process and express an interest. The City is trying to determine the kinds of projects individuals are interested in pursuing in the downtown. It is the Subcommittee's hope to factor all projects into the decision making process in the allocation of RDA funds. He indicated that this is a one time opportunity and that the Council/Redevelopment Agency anticipates that it will be doing this once a year or a couple of years out. He said that the Council/Redevelopment Agency wants to understand the full scope of interest at this time.

Council Member Carr indicated that the City will not be looking for a lot a detail. He requested that anyone who has an interest in developing in the downtown contact City staff. He stated that the Subcommittee would like the RFP process to be as comprehensive as possible because this would be an opportunity to take a look at implementation of the updated Downtown Plan.

Council Member Sellers addressed the Indoor Recreation Center Subcommittee, indicating that the Subcommittee conducted two meetings, including the one held last Monday. He said that significant progress has been made in moving forward in developing a preliminary design. It is anticipated that the Subcommittee will hold at least one more meeting and make a presentation to the Council in August. He said that between now and August 20, a Parks and Recreation subcommittee meeting will be held and that he and/or Mayor Pro Tempore Chang will be attending this meeting, identifying where the Subcommittee is at this point in time. He indicated that three members and an alternate Parks and Recreation Commissioner serve on the Subcommittee. The Subcommittee is cognizant that the Parks and Recreation Commission is concerned about their role and that the Subcommittee is interested in talking to them in detail about what this role out to be both individually and at the Parks and Recreation

Commission level. He felt that the Commissioners are a valuable part of this process and that they will be included throughout the process.

Mayor Kennedy indicated that he and Mayor Pro Tempore Chang serve on the Urban Limit Line (Greenbelt) Committee. This committee is composed of members throughout the community, including those who reside in the greenbelt area, a Greenbelt Alliance representative, Open Space advocates, developers and others in the community who have an interest in the Urban Limit Line/Greenbelt. The Committee met on Monday evening for the fifth time and that it was a fruitful meeting. A good discussion was undertaken about the concept of urban limit line and greenbelt; what the terms mean and how they would be applied. The urban limit line could be called the ultimate growth line or the 50-year growth line. There was discussion whether the greenbelt should be inside or outside the urban limit line. There was also discussion about issues relating to compensation to landowners and how to protect greenbelts (e.g., purchase of conservation easement, zoning, and/or acquisition of property). Other areas of discussion were special study areas that include the area southeast of Tennant/Highway 101 near Murphy and Fisher; the former Bevelacqua property bounded by Spring, Edmundson, DeWitt and the housing development near Community Park; and the Sobrato open space area. He indicated that the Committee will be meeting on August 11 at 7 p.m. in the Villas Conference Room, noting that the meetings are open to the public. He stated that the voters, in the late 1980s, voted in favor of an advisory measure to establish a greenbelt around the City of Morgan Hill. The 2002 General Plan further discussed the evaluation of a greenbelt around the City. The Committee's efforts will be to focus on achieving these objectives. He indicated that he also serves on the Santa Clara County Cities Association and the Santa Clara Valley Transportation Authority (VTA) Financial Advisory Ad Hoc Committee that is addressing the serious budget shortfall the VTA is facing.

### **CITY MANAGER REPORT**

City Manager Tewes indicated that the State has not yet adopted its budget and that staff does not know the potential impact on the City's budget. He said that the City receives monthly allocations of Motor Vehicle License Fee revenues from the State, noting that this month the state controller short paid the City \$36,000 because of the State's failure to adopt a budget and its action on the Motor Vehicle License fees. Next month, it is anticipated that the City will be short paid approximately \$100,000 if the budget is not adopted. He informed the Council that the agenda packet also includes a preliminary report for the Fiscal Year ending June 30, 2003 which suggests that the City ended the year as predicted when staff brought its budget proposals to the Council.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **OTHER REPORTS**

The City Treasurer's Quarterly Finance and Audit Report was deferred to a future meeting date.

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## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Robert Bennich noted that the City hired former Chief of Police Schwab to act as a facilitator for a public art workshop. He quoted from a discussion guide that was distributed and used as a basis for that meeting. He noted that the City recently completed the new Community and Cultural Center and that it does not contain any forms of public art by known artists. He said that the City is moving forward with a large project, a world class aquatics center. He has not seen a requirement that a portion of the funds be devoted to public art. The City is looking at relocating the police facility with no requirement for public art to be a part of that structure. The same applies to the new library, new indoor recreation center, or the future expansion of City Hall. He stated that the editorial page of the San Jose Mercury News discusses how eliminating funding for art is not an option. He said that the City was supposed to have a draft ordinance ready for public discussion and City Council review over a year ago. It was the goal of the January 2002 workshop to raise various issues involved in developing an ordinance so that it can be considered before a preliminary draft is created. He inquired what is happening to the draft ordinance to address public art in the City.

City Manager Tewes indicated that several months ago the Council established a series of workshops on a number of issues that arose out of a Council goal setting retreat. He said that the workshop for the 1% policy for public art workshop is scheduled for August 27 at 5:00 p.m. Therefore, the Council is following through with the direction that has been provided.

John Dossetti addressed the Monterey Road underpass that remains a mess after several years, noting that this is the entrance into Morgan Hill. He understood that there are economic constraints. However, the State of California installed a sprinkler system and improved the underpass when it gave the Highway to Morgan Hill. He noted that the City has allowed the improvements to die and that it is not maintaining the improvements.

City Manager Tewes indicated that last week, the Council approved a project and authorized the award of a bid to clean up the underpass. He stated that the construction work will commence in August.

Mark Grzan expressed concern about the dissemination of information to the public regarding the perchlorate issue. He felt that the information being given to the public is not clear and may be misleading. He said that non-detect does not mean that there is no perchlorate in the City's water system but that perchlorate is measured to 4 parts per billion (ppb). He felt that the information provided on the City's website indicates that there is non-detect perchlorate level in the City's water and that the public may be thinking that the water is perchlorate free. There is an issue where some of the averaging being conducted is incorrect. He felt that this incorrect average falsely underscores the amount of contamination in the water. The City Vision newsletter states that the City is meeting state and federal safety standards. He did not believe that there were any federal safety standards but that there are monitoring standards. He said that there is an advisory from the EPA indicating that 1 parts per million is the recommended human dose, noting that the City is far from this mark. He felt that it

needs to be made clear to the public that the City's water supply and the public's health are at risk and that it gives each family the opportunity to make choices. He felt that the right thing to do is to let citizens know what it is drinking and that the City closes any wells that are contaminated, finding other water services so that the public's health is not placed at risk.

City Manager Tewes said that the City recognizes its responsibility to provide accurate and responsible information to the public and that it has been the City's goal to do so. Staff will strive to make information clearer in future communications to the extent possible. He stated that it is important for the community to understand that the City's water supply is regulated by the California Department of Health Services. The testing regiments that the City is required to follow are guided/directed by state regulations. When the City states that the water supply meets the state and federal regulations, the City is assuring the community that it has met all of the testing protocols and that the results of the test reflect the levels established by the regulatory agencies. He stated that the current State regulation for perchlorate is a regulatory "action level." He indicated that the State Department of Health Services has been directed by the legislature and the Governor to adopt a different regulatory level called a "maximum contaminant level" by January 2004. Until this occurs, there is an "action level" that is established at 4 ppb which represents the level of detectability for the type of system used by the regulatory agencies. Below this level, the reliability of the equipment does not exist. Therefore, the State has established the methods for sampling, confirming samplings, etc. At an action level of 4 ppb, it is the obligation of a municipal water supplier to advise the public and the legislative body that water may be delivered at this action level. He stated that this information is being provided to the public so that they can make choices. The action level also requires the City to shut off wells at 10 times the action level or when it reaches 40 ppb. He indicated that the City Council has adopted a much more prudent and conservative approach and has directed that wells be taken off line. He stated that four wells have been removed from service. This has posed a problem for the City in its water supply. He stated the City's appreciation in the community's cooperation for water conservation. He indicated that a status report will be presented this evening on the efforts to bring two wells back on line by providing packaged perchlorate treatment plants that will ensure that no perchlorate will be delivered from these wells. He said that the City is proud to be delivering water to its customers that meet or exceed state and federal standards.

Mayor Kennedy announced a tribute dinner/benefit honoring Roger Knopf, an individual who makes Morgan Hill the wonderful community that it is. The tribute dinner will be held on August 2, 2003 at the CordeValle Golf Club at 6 p.m. sponsored by Leadership Morgan Hill.

Council Member Sellers stated that this Council has undertaken a very aggressive approach to testing perchlorate and has gone well above any legal requirements. The Council has taken a conservative approach to any detect levels required of the City. He said that the City is doing a lot and taking a strong stand in this issue throughout the community only to have these types of accusations leveled. He said that sometimes, in trying to deliver factual information, the entire picture is not given. He felt that it was important for the Council to make sure that the public is aware that every member of this Council takes this issue very seriously and that it has spent a lot of time and energy on this issue. He felt that the Council has always errored on the side of conservatism in making sure that everything that can be done is being done.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Pro Tempore Chang requested that item 16 be removed from the Consent Calendar in order to allow the City Manager to provide a brief report on the Tennant and Nordstrom perchlorate removal plants. City Clerk Torrez informed the City Council that revised minutes for the June 24, 2003 meeting have been distributed for its consideration.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-15, 17 and 18, as follows:*

1.     **JUNE 2003 PRELIMINARY FINANCE AND INVESTMENT REPORT**  
***Action:** **Accepted** and **Filed** Report.*
2.     **APPROVAL OF 2003/2004 SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY (SCRWA) BUDGET**  
***Action:** 1) **Approved** the 2003/2004 SCRWA Budget; and 2) **Adjusted** the Adopted 2003/2004 City of Morgan Hill Sewer Operations and Sewer Impact Budgets as Detailed in Exhibits A & B.*
3.     **VOTING DELEGATE FOR 2003 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**  
***Action:** 1) **Approved** Appointment of Mayor Kennedy as the City's Voting Delegate and Mayor Pro Tempore Chang as the Alternate Voting Delegate to the League of California Cities' Annual Conference; and 2) **Directed** the City Clerk to Complete the Voting Delegate Form and **Forward** Said Form to the League of California Cities.*
4.     **APPROVAL OF RECLASSIFICATION RECOMMENDATION FOR ASSISTANT PLANNER AND ADOPTION OF REVISED CLASSIFICATION SPECIFICATION AND SALARY RANGE FOR THE BUILDING INSPECTOR/FACILITIES MAINTENANCE COORDINATOR POSITION**  
***Action:** 1) **Approved** the Reclassification Recommendation for the Assistant Planner in the Planning Division; and 2) **Adopted** the Revised Job Description and Salary Range for the Building Inspector/Facilities Maintenance Coordinator in the Building Division.*
5.     **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**  
***Action:** **Authorized** the City Manager to Execute an Extension to the Consultant Services Agreement for Contract Planning Services at a Cost Not to Exceed \$75,000.*
6.     **AGREEMENT WITH THE LAW FIRM OF ENDEMAN, LINCOLN, TUREK & HEATER**  
***Action:** **Authorized** the City Manager to Execute an Agreement with the Law Firm of Endeman, Lincoln, Turek & Heater.*

7. **APPROVAL OF RESOLUTION ELECTING TO BE SUBJECT TO SECTION 22873 OF THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT TO PROVIDE HEALTH BENEFIT COVERAGE FOR THE DOMESTIC PARTNER OF AN EMPLOYEE OR RETIREE**  
*Action: **Adopted** Resolution No. 5689.*
8. **CONTRACT FOR WORKERS' COMPENSATION THIRD PARTY ADMINISTRATOR (TPA)**  
*Action: **Authorized** the City Manager to Execute a Consultant Service Agreement for Third Party Administration of Workers' Compensation at a Cost Not to Exceed \$35,000.*
9. **CITY VISIONS PRINTING**  
*Action: **Authorized** the City Manager to Execute a Purchase Order in the Amount of \$21,890.11 for City Visions Printing and Film Development.*
10. **APPROVE SOLE SOURCE PURCHASE OF WATER METERS**  
*Action: 1) **Approved** Purchase of Water Meters, Meter Parts and MXUs from Invensys Metering Systems (Formerly Sensus Technologies) in Accordance With Section 3.04.120.A(4) of the Municipal Code – Brand Names or Equal Specification, and Section 3.04.150.C – Sole Source Purchases; and 2) **Approved** Purchase Order of \$250,000 to Invensys Metering Systems for the Annual Supply of Water Meters, Meter Parts, and MXUs.*
11. **APPROVAL OF REVISED MAIN AVENUE/ UNION PACIFIC RAILROAD (UPRR) CROSSING AGREEMENT**  
*Action: **Approved** the Revised Main Avenue/UPRR Crossing Agreement, Subject to the Approval of the City Attorney.*
12. **AWARD CONTRACT FOR CONSTRUCTION OF THE MONTEREY ROAD/UNION PACIFIC RAILROAD (UPRR) UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT**  
*Action: 1) **Approved** an Appropriation of \$175,000 from the Current Year Unappropriated Traffic Impact Fee Fund Balance to Complete Funding for this Project; and 2) **Awarded** Contract to Granite Construction Company for Construction in the Amount of \$531,531; and 3) **Authorized** 5% Construction Contingency Funds Totalling \$26,577.*
13. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR SERVICE REPAIR OF SEWER LIFT STATION PUMPS AND STORM STATION PUMPS**  
*Action: 1) **Approved** New Maintenance Agreement for Service Repair for Sewer Lift Station Pumps and Storm Station Pumps; and 2) **Authorized** the City Manager to Execute the Agreement on Behalf of the City.*
14. **PUBLIC WORKS MAINTENANCE AGREEMENT FOR REPAIR AND MAINTENANCE OF TELEMETRY SYSTEM**



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**Action:** **Authorized** the City Manager to Execute the Agreement with Telekey SCADA Systems, Inc.

15. **APPROVE PURCHASE ORDER FOR REPLACEMENT OF TWO SEWAGE SUBMERSIBLE PUMPS AT “C” LIFT STATION**

**Action:** **Approved** the Purchase of Two Sewage Submersible Pumps in the Amount of \$20,440.58.

17. **ACCEPTANCE OF MAIN AVENUE WELL DRILLING PROJECT**

**Action:** 1) **Accepted** as Complete the Main Avenue Well Drilling Project in the Final Amount of \$135,077; and 2) **Directed** the City Clerk to File the Notice of Completion With the County Recorder's Office.

18. **MINUTES OF JOINT SPECIAL CITY COUNCIL AND SPECIAL PLANNING COMMISSION MEETING OF JUNE 24, 2003**

**Action:** **Approved** the Minutes, as Amended.

16. **STATUS REPORT ON TENNANT AND NORDSTROM PERCHLORATE REMOVAL PLANTS**

City Manager Tewes stated that staff has provided the Council with copies of the City's comments to the Regional Water Quality Control Board on the report and response from Olin Corporation. In the City's response, it suggests that Olin Corporation has not fully complied with the orders of the Board by not developing plans and schedules for the basin-wide clean up of the perchlorate plume that is at least 8 miles long. He stated that staff will continue to work with the Board to ensure that Olin Corporation takes all the appropriate steps, expeditiously, to begin the clean up of their site and of the ground water basin that will impact the City's wells. He indicated that four city wells had detects of perchlorate over the past few months and have been taken off line. He said that the Nordstrom and Tennant wells have important roles to play in the City's overall water system. He indicated that the Nordstrom well is the largest producing well. With it being off line, the City had to encourage water conservation. However, the Nordstrom well is being outfitted with a perchlorate treatment plant. He said that it is staff's expectation that this system will be operational on Friday or Saturday. When this occurs, the City will be able to add 1,000 million gallons per day to the water supply system and that this water will be assured to be perchlorate free. The Tennant well, south of the Olin site, serves another important function. If a treatment plant can be added to this well, the City can add to the water supply. He stated that the City will be the first private party to begin the clean up of the plume if it can begin pumping the Tennant Avenue well. He indicated that it is anticipated that the Tennant Avenue well and its perchlorate treatment plant will be on line in August.

**Action:** **Information** Only.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 19, as follows:*

19.    **AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON)**

**Action:** **Authorized** *Executive Director to Execute Consultant Agreement for Legal Services in Fiscal Year 2003-2004 with Richards, Watson, and Gershon in the Amount of \$65,000.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Carr, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 20-21, as follows:*

20.    **MINUTES OF JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING OF JUNE 25, 2003**

**Action:** **Approved** *the Minutes as Written.*

21.    **MINUTES OF JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF JULY 2, 2003**

**Action:** **Approved** *the Minutes as Written.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

Mayor Kennedy recommended that agenda item 23 be considered at this time. He indicated that he met with the applicants for the Barrett-Odishoo project this afternoon and that they have a proposal that would affect all three appeal applications.

Council Member Tate and Mayor Pro Tempore Chang indicated that they would be recusing themselves from agenda items 22, 23 and 24 as they own property within 500 feet of these applications. Both excused themselves from the Council Chambers.

**Action:**        *It was the consensus of the City Council **to consider** agenda item 23 at this time.*

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**23. MEASURE P APPEAL APPLICATION AP-03-02: BARRETT-ODISHOO – *Resolution No. 5691***

Planning Manager Rowe presented the staff report, indicating that the categories being appealed are the Public Facilities Category (request for 2 additional points for full street improvements); and Quality of Construction. He informed the Council that staff has distributed a revised resolution that includes expanded findings for this project, citing the five rating factors that apply to this project. Under the Lot Layout category, the project was considered to have an above average but not a superior layout by the Planning Commission. He indicated that it is being recommended that there be no change in the project's total score and that the score remain at 178.5.

Mayor Kennedy opened the public hearing.

Alexander Henson spoke on behalf of the appellant and addressed two separate arguments. The first argument focuses on the scoring and the Lot Layout category. He indicated that all the project needs to do to equal the score of the lowest project receiving allocation is to attain an additional point. He contends that the project does not have three minor problems that precluded the project from receiving the one extra point under Lot Layout. He felt that the number of driveways at 30% of the project would be a superior design. He went back to the Planning Commission to ask that they define what would be a superior lot layout. He did not understand the distinction of having the driveways adjoining with a strip between them. He did not believe that the requirements were being applied fairly when it comes to attached dwellings. He stated that other projects have been scored without any reference to adjoining driveways even though they provided adjoining driveways and attached dwellings in the scoring process. He requested that the Council provide the additional point. He submitted a letter relating to the request for this point. He indicated that he has come up with a proposal for a different way to allocate allotments. He distributed a table that would apply to allotment distribution for Fiscal Year 2005-06. He noted that application MP-02-03 would receive 29 allotments in 2005-06 and no allotments in 2006-07. Under his proposal, the allocations for this Measure P application would be left out. He is proposing that for application MP-02-12: Oliver-Borello, 2 units be subtracted from their allocation in 2005-06 and 2 units be subtracted from MP-02-15. Instead of having all of the 20 units in Fiscal Year 2005-06, that application MP-02-25 be granted 16 units in Fiscal Year 2005-06 and 4 units be carried to Fiscal Year 2006-07. This alternative proposal would enable the Council to have 8 additional units to allocate in 2005-06. He noted that there are two projects that just missed the cut off for allocations: this project and the Dempsey project. He suggested that rather than conducting a rescoring for this project or the Dempsey project, the Council could allow two more affordable housing projects to commence construction. He noted that this project as well as the Dempsey project are attached dwellings and are low cost housing units needed in the community. He stated that item 33 on this evening's agenda would be discussing revisiting the 2005/06 allocation. He noted that staff is recommending that any additional units that might become available be given to approved projects. If this is the course of action that is followed, Mr. Schilling and Mr. Oliver can get their allocations back and that this project can receive additional allocations. This would benefit the community by having a broader housing mix. He stated that he discussed his proposal with the City Attorney who indicates that there may be some procedural issues with the chart presented.

City Attorney Leichter stated that she was presented with this issue this afternoon and had some discussions with Mr. Henson and Mr. Tichinin regarding this issue. She said that upon a cursory review, it appears that the appeal before the Council is on the appeal of the scoring issue. There is an issue whether the Council can even consider the allocation issue tonight by virtue of how the appeal was agendized and that she did not recommend that the Council do so. In terms of the allocation issue, she felt that it was appropriate for the Council to proceed with the scoring appeal this evening but that the allocation distribution is something that staff needs to look at in much more detail because there are a host of legal and policy implications stemming from this decision. Staff requests that any appeal on this basis be deferred until staff has the opportunity to look at the issue.

Council Member Sellers noted that the City Attorney's analysis seems to indicate that there would be a necessitated continued delay on the allocation issue. He inquired as to the implication in delaying the allocations.

Director of Community Development Bischoff stated that typically, the City grants allocations in April and resolves any appeals by May. He said that developers are anxious to proceed with the Measure P process and their project entitlements in order to commence construction during the dry season. With the delays already experienced, it is delaying the start of projects. If staff is to return with this matter to the Council, this item would be continued to August 20. If the Council is just asking that staff determine whether or not the Council could do anything with respect to scoring, staff could return to the Council on July 23. He said that should the Council have the discretion to allocate allotments, the City would have to provide notice to other Measure P applicants of an upcoming meeting and hearing of this matter and that they be given the opportunity to participate. This notification process could not happen within a week period of time.

Mayor Kennedy stated that he read the Residential Development Control System ordinance and that it clearly states that appeals for allotments go to the Council. The Council can review these allotments and that the decision of the Council on the award of the allotments is final. He expressed concern that if the planning commission makes a series of allocations that cannot be changed, the appeal process would be worthless, resulting in an invalid appeal process. Should the Council agree to change the scores, he expressed concern that the allocations have already been made. Furthermore, developers who have allocations believe that they have been given these allocations and that the ownership of these allocations becomes sacred. He did not believe that the process is working the way it was intended.

City Attorney Leichter said that the actual language contained in Measure P is something that staff has been dealing with for a while. She said that Measure P refers to the allotment evaluation process. She said that there is a linguistics clarity issue that staff has had a long standing interpretation that allotments have never been appealable to the Council. This has been placed within the discretion of the planning commission by Measure P. She informed the Council staff will be discussing this issue with outside counsel who is redrafting Measure P. Staff will be coming back to the Council to ask what it believes is fair and consistent in terms of correcting this issue.

Mayor Kennedy requested that staff look at the language in the initiative itself.

City Attorney Leichter said that staff needs time to look at the language of the initiative and that hopefully it will be corrected in the future.

Director of Community Development Bischoff felt that the appeal process in place works. Should the Council grant additional points, the Council would remand the appeal applications back to the planning commission and the planning commission would reallocate according to the new scores that have been applied by the Council.

Council Member Sellers said that it would seem that you would go through the appeal process before going through the allocation process. He wanted to know why the allocations were “tentatively” awarded.

Director of Community Development Bischoff said that when the planning commission concludes its review and makes its allocation distribution, it does not know whether there will be appeals. When there are appeals, the City will not accept an application for processing until the appeals have been resolved. Should the appeals be resolved such that the scoring would change and a different project would receive allocations from those that the planning commission proposes, it would have to go back to the planning commission for their amendment to the allocations. He felt that this was a process that works, but that there are numerous steps involved.

City Attorney Leichter said that staff recognizes that there may be a procedural glitches and that staff will be looking at correcting these as it recommends changes to Measure P. Perhaps speaking to those who helped draft the original Measure P would help clarify the original intent of the language.

Dick Oliver indicated that he represents three of the projects that are in this year’s Measure P process. He stated that he was approached this morning by the applicant’s attorney and asked if he would give up the units for two of his projects. He stated that he could not because both projects involve outside individuals (Borello family and the Ruge family). He advised that he did not have the authority to do so nor was it proper to do so. He said that in the ten years of Measure E and Measure P application processing, he has never had an applicant come at this late stage trying to upset the allocation process or the appeal process as has been done in this case. He felt that the Measure P process has worked well over 10-years and that the appeal process works. Should the Council wish to grant an additional point, the project would need to go back to the planning commission for reconsideration. However, he felt that it was improper to upset the allocation. He noted that the applicant has had two full hearings before the planning commission and that he had time to make the best case to score higher on these points. The applicant also had an opportunity to present a formal preliminary Measure P application to staff and have the project scored before the formal application was submitted. The problem with site planning and other issues could have been resolved resulting in the project attaining a higher point score had the applicant gone through the preliminary review process. He stated that everyone in the development community have missed allocations in past years because something was missed. Developers learn by going through the process and improve projects in the next round to achieve higher scores. He felt that this project would make corrections and will more than likely receive allocations next time around. However, he did not believe that there was justification to override the actions of the planning commission. By doing so, the City Council discredits the planning commission and its integrity. He

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informed the Council that he contacted Scott Schilling to inquire if he would be willing to give up allocations. Mr. Schilling requested that he inform the Council that he was not willing to do so.

Bruce Tichinin indicated that he also represents the appellants in this matter. He felt that both Mayor Kennedy and Council Member Sellers raised good points about the appeal process: 1) what is the use of increasing the score if it does not give the appellant the allotments being competed for; and 2) what is the value of winning on appeal if you do not receive the allotments, but instead, it goes back to the planning commission for realignment of the allotments. If a project increases its score and allotments are based on the score, a developer should automatically receive a qualification that does not require re review by the planning commission. He felt that this proposal represents a way for the Council to award allocations to high quality projects and provide affordable housing. He felt that this was a more important consideration than those raised by Mr. Oliver. He encouraged the Council to give this issue serious consideration.

Ralph Lyle stated that he was addressing the City Council as a citizen and not representing the planning commission. He said that the award of allotment by the planning commission was a contingent set of allotments that would take affect if the rankings were not changed. If the Council agreed with the scoring change, the application would automatically go back to the planning commission for reallocation of allotments. He felt that the process is valid from this point of view. The advantage of this process is such that if there is no change in the ranking of a project, the process has saved several weeks by not having to go back to the planning commission. He stated that there is another Measure P issue. He said that Measure P states that you start with the allotment and go from the highest ranking project down to the next project(s) in line. In the Measure P update, the language is being changed to give more flexibility to the planning commission. He said that in this year's competition, the City strained the language of Measure P as far as it can be stretched. To state that the City should include another project or two; taking units away from ongoing projects to create a larger on going project situation, is the wrong thing to do. If the score changes, he would recommend that the City cut additional projects and give more allotments to the higher scoring projects. This would result in current projects loosing allotments.

No further comments being offered, Mayor Kennedy closed the public hearing.

Council Member Carr inquired why the City was so late in the calendar year in considering the appeal process.

Planning Manager Rowe indicated that the opportunity to appeal the evaluation occurred following the conclusion of the evaluation process in April. He stated that appeals were considered by the Council on May 28. The appeal process is late because the appeals were referred back to the planning commission and that the earliest that they could schedule a special meeting was June 17. The appeals were to return to the Council on July 2 but that they were continued to today's date due to a mix up in the public notice mail outs that necessitated readvertising of the hearings for tonight's meeting. He indicated that the May hearing was a normal timeline for the Council to hear appeals.

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Mayor Kennedy noted that Mr. Henson indicated that other projects were awarded points that had similar types of driveways.

Mr. Henson said that if you look at any of the projects that have attached dwellings they also have adjoining driveways. It was felt that this project did a good job of not having a great number of adjoining driveways (e.g., 30%). He said that the Dempsey project is indistinguishable from this project and it received a superior rating in lot layout.

Mr. Tichinin said that it was his understanding from Mr. Burgos that of the projects in this competition that contained attached driveways, this project contained the least number of them and was the only project that was scored down for this characteristic. Therefore, he felt that there was an inconsistency in the scoring process.

Council Member Carr noted that this project had a number of corner lots that had an opportunity to separate driveways. He inquired whether the other projects utilized all the corners and all the opportunities to separate their driveways.

Vince Burgos said that there is always an opportunity to separate driveways but that it has not been an absolute requirement or ordinance that requires a specific number of driveway separations. He said that this project has the highest percentage of detached driveways of any project that he has submitted through this process.

Mr. Henson felt that 30% was the least number of adjoining driveways of any projects submitted that are of an attached dwelling product. He wanted to know why this project was penalized while others were not.

Council Member Carr noted that the project had an opportunity to separate driveways on two corners.

Mr. Burgos indicated that providing additional detached driveways would eliminate on street parking. He addressed the reasons the corner lots were not designed to provide side driveways (close returns, landscape/buffer area, provide private/nicer entrance). He said that one lot was penalized because it was felt that one unit appeared to be out of scale with the rest of the product.

Planning Manager Rowe said that a project can have two minor deficiencies in the layout and receive a superior rating. The Dempsey project may have been rated down for having adjacent driveways, noting that it was only 1 or 2 minor deficiencies which still garnered two points. He indicated that staff looked at the San Pedro project earlier today and that it was noted that it had 22% of the lots with parallel adjacent driveways and that it was rated as a minor deficiency.

Mayor Kennedy felt that it would be appropriate for the Council to focus on the allocation rather than the award of points. He noted that there is an appeal of points and an appeal of the award of allotments. He said that it was difficult for the Council to go back through the entire history that the planning commission went through in conducting the evaluation. He felt that there was the issue of fairness and that the Council needs to ensure that a fair and equitable process is followed. It was his belief that the

Council should have the right, based on an appeal, if there are issues that need to be taken into account, to override the planning commission's action. He did not believe that this should be taken away from the Council unless it is taken away by voter initiative. It was his belief that the Council needs to review the authority it has in the allocation process. He recommended that the Council defer action on the appeal until it receives a legal opinion.

Council Member Carr stated that it was his hope that the Council would not delay the Measure P process further as there are many individuals interested in the process and how they can move forward. He said that it appears that the Council has been reviewing an appeal of a scoring process for specific categories that were scored since May. He noted that the Council has never examined the allotments nor have considered an appeal of the allotments. He suggested that the Council concentrate on the scoring. Should the Council decide that projects should be granted additional points, the planning commission would need to take a look at where the projects fall within the allocation process. He noted that it has been stated many times that the planning commission gave out allocations based upon a final review/final confirmation of points. The planning commission gave the allocations with the idea that this would speed up the process if there were no changes to points. He said that it may have been an incorrect strategy at this point and the Council would not have the added pressure of allocations already being assumed while there are appeals still to be heard. He felt that the Council needs to concentrate on the points for these particular projects and that the allocation process be determined by the planning commission, should the Council grant additional points.

City Attorney Leichter stated that it is within the Council's discretion to put the appeals over until it receives further advice on the allocation appeal issue. She stated that there is a legal question as to whether the appellants have properly appealed the allotment issue. It was her understanding that this was not part of the written appeal filed, it was never raised at the planning commission level, and that it has only been recently raised. She said that in general, the appellant would be limited to appealing those issues that were placed in their written appeal. She stated that there is a significant question whether this is a proper basis for an appeal.

Mayor Kennedy clarified that he requested that this item be pulled out of order to discuss the allocations and whether the Council needed to receive another view point on the allocation. He said that the Council could hear the other projects before making a final decision.

Council Member Sellers recommended that Council focus on the direct appeal issues that were raised and that they be resolved. He felt that the one issue that warranted further discussion dealt with the driveways (coverage) and whether this minor issue should be eliminated, allowing the project to receive another point. He said that the key factor was whether projects were dealt with fairly and equitably. He felt that this was a high bar and that he did not see this project being able to receive another point.

Mayor Kennedy stated that he would be willing to consider granting a point to this project for the driveway issue.

Council Member Carr noted that at the last Council meeting he was critical of the planning commission under the Quality of Construction category because he did not have an idea on how this category was



judged by the commission. Staff has explained the scoring of this category and that he understands it a lot better. He felt that this was an area the Council has given the commission a lot of flexibility in scoring this category. He said that he could not judge this category in order to grant an additional point. The issue comes down to the Lot Layout category and whether this category was applied even handed with other projects. He noted that Planning Manager Rowe identified another project that had 22% adjoining drives that was also given the same minor design flaw. He remains concerned because this is a project that provides a lot of affordable housing that is needed in the community. He said that there is the ability for this project to make a couple of changes in the Lot Layout category in order to improve its score. He noted that the Council needs to judge projects based on today's criteria and categories. He was not as concerned about adjoining driveways and recommended that the Council look at this issue in the future. He stated that he would feel uncomfortable adding a point to this project without reviewing other projects as well.

Council Member Sellers said that although he has concerns about some of the points and how they are dealt with, the fact is that the rules are in place. He felt that the Council should review whether some of the points are precluding the City from having the kind of housing stock that is found desirable for the community. He felt that it was the Council's job is to go through the appeal process this evening. He indicated that he has met with the applicant several times and that he has spent a lot of time reviewing the appeal. He felt that this was an equitable process and that he did not see a reason to grant an additional point.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 2-1 vote with Mayor Kennedy voting no and Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Revised Resolution No. 5691 with Findings.*

Council Member Carr recommended that item 33 be considered upon the conclusion of the three appeal applications to allow staff to respond to the additional allocations that may become available as alluded to by one of the appellants.

**22. MEASURE P APPEAL APPLICATION AP-03-01: EAST DUNNE-DEMPSEY –  
Resolution No. 5690**

Planning Manager Rowe presented the staff report, indicating that there are five categories for which the applicant is requesting point adjustments: 1) Schools (no change in points recommended); 2) Public Facilities (planning commission recommends 1 additional point); 3) Quality of Construction (planning commission recommends 1 additional point); 4) Circulation Efficiency (no change in points recommended); and 5) Natural and Environmental (no change in points recommended). With the two point adjustment recommended by the planning commission, it would result in a project total score of 179. However, it would not raise the project's total point score sufficiently to place it in a position to receive a building allocation. Staff recommended that the appeal be denied and that the Council adopt the resolution with the modified scoring.

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Mayor Kennedy inquired as to the basis in which points were awarded under the Natural and Environmental category for other projects?

Planning Manager Rowe said that there may have been other opportunities for the project to gain points for other natural features. He stated that the opportunity to earn points under this category comes from the presence of large oak trees and other trees on site. In this application, the applicant indicated, without any qualifiers, that all trees on the site would be preserved. When looking at the grading plan, it was noted that 8-10 trees would be removed. Therefore, not all trees would be preserved on site. As the application did not represent the preservation of all 18 trees, only 1 point out of the two points was granted. The Planning Commission recommending awarding 1 point for preserving some of the trees.

Council Member Carr requested clarification on how the planning commission scored the Quality of Construction category.

Planning Manager Rowe indicated that the planning commission wanted to make sure that the 1 point made a difference, noting that in past years, projects have been able to achieve the maximum 15 points under Quality of Construction without reliance of this point. He stated that that the criterion was modified a year ago such that in order to attain 15 points, a developer had to attain the 1 point from the planning commission. The planning commission had to determine what would factor into projects receiving the 1 point as the criteria states “overall excellence.” The commission came up with 5 rating factors. It was determined that there was not a consensus of what would be the number 1 factor. Each planning commissioner assigned a weight factor to each of the 5 ratings. Following individual scoring by the planning commission and the scores were tallied; projects had various members of the commission scoring the project. The commission decided that any project that did not receive more than 4 commissioners scoring the project would not represent a quorum of the commission. The commission decided that they could not include an average for these projects. When the application went back to the planning commission on appeal, the commission were of the opinion that if 3 commissioners voted on a project, it should have required other commissioners to consider giving a score to the project, providing an average to the project. The commission did so when given the opportunity to look at the project’s scoring.

Mayor Kennedy opened the public hearing.

Janet Dempsey addressed the Jasper Park project and stated that the basis for her discussion was under the Natural and Environmental category. She indicated that she needed clarification regarding what was meant by “substantially preserving the trees” in order to receive 2 points. She noted that there was also discussion about out rock croppings, seasonal trees, slope terrain, etc. that could gain an extra point. She inquired whether the only way to achieve 2 points was to substantially preserve trees and meet the rest of criteria with regards to rock out croppings, etc., or whether you can receive the 2 points from substantially preserving trees. It was her belief that this competition was about the trees under the Natural and Environmental category and that there was no regard giving to rock out croppings or things of this nature. She confirmed that her narrative stated that the project would save all trees. However, she sent out a clarifying letter that stipulated that it was the intent of the project to preserve significant trees and not the walnut, prune, and/or apricot trees nor the shrubby plum trees. If you take away the

walnuts and other orchard products, this project proposes to save a substantial amount of trees. If the project saves a substantial amount of trees, she felt that the project meets the criteria and should receive the 2 points as per the response received from staff from the narrative. She referred to the DiConza project located to the south of this project, noting that it received 2 points for substantially preserving trees without consideration of the rock formations, seasonal creeks or sloped terrains. She stated that she has yet to receive a reasonable justification under this category.

Ms. Dempsey stated that it was her opinion and that of her partners that everyone is hesitant to grant the point because the project would bypass Dividend Development who would in turn lose its allocation. She said that the planning commission granted the allocation contingent upon the outcome of the appeals. Had the planning commission known that she would be pursuing the appeal they may have conducted themselves differently and held off on granting the allocations. She said that the trees proposed for preservation would provide a nice buffer from the proposed project and the First Community Housing project. She stated that it has always been the intent to save the significant trees as part of project development. She indicated that the Odishoo project received 2 points for preserving significant trees while removing a walnut orchard. She requested consistency in the scoring under the Natural and Environmental category. She was finding an inconsistency in the scoring process and that she has a hard time answering to her partners. She requested a reasonable justification as to why the project did not receive the 1 point. She indicated that there were other projects that received 2 points that do not have outcroppings or these types of elements.

Dick Oliver felt that the purpose of the appeal process was to clear blatant errors and obvious mistakes. He felt that under the public facility situation, there was a clear misunderstanding between two members of the planning commission who voted for the additional point for the detention basin, noting that this was a 3-2 planning commission split vote. He stated that he met with two of the planning commission members who voted for the points. Both have since stated that had they understood that new material was being presented, they would not have agreed to grant the additional point. He noted that the criterion clearly states that the applicant had to state in the narrative the area to be benefited by the detention basin and how it was to be connected. He said that the only time that these two items came up was at the appeal hearing and that they were not included in the narrative or at any other time prior to the appeal. He stated that prior Measure P competitions did not allow the submittal of new material. It has been indicated that a mistake has been made and that the point should be taken away because the point was applied based on new material and that it could not be considered on appeal. Regarding the Natural and Environmental category relating to the trees, he felt that staff has addressed the issue. He indicated that at no time has the planning commission approved a stub street that is not attached to a project.

Planning Manager Rowe read the criteria as listed under the Natural & Environmental category, noting that the criteria is not dependent on trees and/or rock outcroppings, creeks, etc. If a project does not preserve trees, a point is lost. If there are no trees to be preserved, there is no opportunity to gain a point. He stated that the criteria states that if a project's site substantially preserves the existing terrain and other natural ground features, it can receive up to 2 points. He said that typically, absent any other natural features other than trees, the project would receive two points for preserving all trees. He noted that the applicant stated that the project has trees on site and that the homes would be sited to preserve

“all” trees. When staff looked at the plans, staff noted that 10 trees would be removed and 8 trees would be preserved. He stated that the criterion does not distinguish between significant trees, orchard trees or any other types of trees; it simply states “preserves trees.” Therefore, the retention of 8 out of 18 trees does not represent a substantial preservation of trees. The project was given one point under this criterion. He informed the Council that the City has a significant tree ordinance which exempts orchard trees from a tree removal permit. He said that the City’s municipal code identifies a distinction between significant trees and other types of trees but not under the Measure P criteria. Measure P simply states the preservation of trees and does not differentiate between significant, non significant or orchard trees. He noted that there have been some residential projects that incorporated orchard trees into the projects’ design.

Ms. Dempsey inquired when the City started to count walnut trees and when an orchard product was included in the tree count. If there is a huge value placed upon orchard trees, she felt that more should have been done to save them. She recollected a development that took a walnut orchard and saved them as part of a development. She felt that walnut trees are one of the worst neighborhood products that you can get because they are toxic and compete with other vegetation. She said that it is difficult to retain walnut trees in neighborhoods. If there was any kind of information raised during the planning commission meeting, it was only to clarify that she has a pond design that works. She also raised the association with First Community Housing and how a retention pond that reserves 7.5 acres for a mitigation measure that could serve to benefit an existing project that does not currently mitigate; or a future project that would not intend to mitigate. This point was raised to further argue staff’s belief regarding the surrounding properties. She noted that there is a 20 acre property zoned R-2 could benefit from a non connected mitigation pond design in the future. She said that this project can create the same benefit for the channel without providing a physical connection. This was made clear to the planning commission and she felt that they understood what she was trying to do to meet the intent of the criteria.

Mark Grzan felt that there appears to be a conflict between the heritage tree ordinance and the City’s municipal code because the ordinance recognizes the importance of some trees and that this ordinance is not extended to Measure P which presents a conflict to developers, the planning commission and staff.

City Attorney Leichter stated that the issue of the heritage tree ordinance versus the criterion under Measure P are separate issues.

No further comments being offered, the public hearing was closed.

Council Member Carr referred to the Public Facilities category as it relates to the pond issue. He stated that he did not understand the relationship to the Monte Villa and the Twin Oaks projects. He said that in Measure P, when a precedent is set, the City tries to look at how the categories in the criteria apply and change it for future competitions. He suggested that changes to the criteria apply under this category. He inquired whether the Monte Villa Twin Oaks project received approval for the larger sized pond that set a precedent where the City went back and stated that it had to take a look at the criteria.

Planning Manager Rowe indicated that staff and the planning commission used the criterion that is currently written in this case. He noted that the Dempsey narrative did not mention the other projects as

a precedent for the drainage concept being introduced. In the appeal, the applicant cited these two projects as an example of how this drainage concept was used in the past and where points were given.

Council Member Sellers said that it appears that the conflict lies with the applicant indicating that they would be providing a public facility and providing an example of where it might provide a benefit. However, if the project would only be benefiting the adjacent project, you could draw another conclusion. He said that the criterion is not abundantly clear. However, due to the nature of the facility being proposed, it would be, by nature, a regional facility or have a multiple benefit to the region surrounding this project.

Planning Manager Rowe clarified that if the property located across the street were designed such that a storm drain line went under East Dunne Avenue to connect to this facility, it would take storm water runoff to a holding area instead of taking it down a storm drain line to the Butterfield Channel. The problem with this is that it represents an area that is beyond what was described in the appellant's narrative. However, if the appellant changes their narrative in the next Measure P go around, and that there is benefit to the adjacent land, it could be acknowledged. The Planning Commission decided to look at other trees such as orchard trees and give acknowledgement of the preservation of trees.

Council Member Sellers felt that the Council needs to address Ms. Dempsey's concern relating to the trees. He did not believe that all trees are equal. He noted that the planning commission did not make a distinction between trees. He felt that it is the Council's job to determine whether the process was fair and equitable. Even though he does not necessarily agree that a scrubby prune tree is the same as a beautiful oak tree, he felt that this was the way the planning commission judged it and this is how it should be addressed at this time. However, the Public Facility category was a different matter. He felt that there was an attempt to offer a regional facility such that it would mitigate, at some point, to add run off into the Butterfield Channel. If there was ambiguity in the narrative, he felt that it was an attempt for the applicant to provide an example. Therefore, he would be willing to give the applicant the benefit of doubt under this category.

Council Member Carr felt that it is the Council's job, in this appeal hearing, to consider the points and the areas being contested to determine if they were interpreted correctly. He felt that the Council found a couple of areas in the criteria that need clarification for future scoring. He said that it appears that the same rules were applied to the 23 Measure P projects and that they were scored under the same literal interpretation such as "a tree being a tree." He noted that under the Natural & Environmental category it simply states "preserves trees." He stated that he may not necessarily agree with this and that he appreciates the fact that the applicant is saving the significant trees and not the other trees. He felt that Mr. Grzan raised a good point in that there are some inconsistencies with City ordinances. He recommended that ordinances be tied better so that there is clarification as to the definition of what is meant by a significant tree. He felt that other projects were scored in a similar manner. He noted that staff recognizes that perhaps a scoring mistake was made in another project but that it was one that the project should have received less points. Under the public facilities issue, he felt that there is great value in having an oversized pond to serve a regional benefit. He said that one of the planning commissioners agreed that the project was not meeting the criteria but that he liked the idea and voted for it. He was not sure that this is the way the City should be dealing with appeals. He felt that the City needs to make

sure that the criteria are applied consistently. He was not sure that it was in this case. He felt that this was an area that the City needs to look at as well. He said that there is still some confusion on how the planning commission scored projects under Quality of Construction. He said that he was troubled that the planning commission chose to score projects that were of a certain minimum points that had the potential of receiving allotments. He noted that some commissioners chose to score this project under this category while others chose not score this category. He felt that the planning commission needs to be real sure that if they are going to be given the opportunity to have discretion in awarding this point that it be applied across the board. In this case, not enough planning commissioners applied the score to make it count. He indicated that as part of the appeal process, the planning commission had a long discussion on whether they should score this category after the fact. He was not sure whether this was fair to other projects. He felt that the planning commission needs to think this process through and decide whether it still wants the opportunity to apply this point. If so, the planning commission needs to decide how it will apply the point fairly across the board. He stated that he was not pleased with the way this worked out. He did not see where this project would receive enough points to be able to send it back to the planning commission for allocation purposes.

Council Member Sellers felt that the appeal process requires the Council to specify the reasons for denial, should the Council decide to deny the appeal. He stated his concurrence with the planning commission's recommendation on points in the two categories.

Mayor Kennedy felt that all three of the appeal projects were good projects as they would provide affordable housing and would be good infill projects as well. He stated that he would like to find a way to give the three projects points so that the City does not lose these three projects. He understood that the Pinn Brothers' project would not score enough points to be close to receiving allocations. He noted that the City has focused its attention on trying to build out partially completed projects and that this has led to a lot of points being awarded to on going projects. He felt that this prevents the City from starting other new projects that may offer a lot to the community. He suggested that some allotments be set aside for Council discretion.

Council Member Sellers said that any additional allocations that would be derived from the next Residential Development Control System ballot measure would provide a unique opportunity to look closely at building allocation opportunities. He felt that it was important to talk about the points and the specifics. He felt that a project that is within a point from receiving allocation would increase the possibility of the project receiving allocations sooner rather than later.

Council Member Carr felt that this is an important infill development. He stated that he would like to find ways to grant allocations to affordable projects. He said that the appeal process before the Council deals with the points and does not deal directly with the allocations. He felt that the Council would have the opportunity to discuss the allocation distribution later in the evening. He did not agree with the Public Facilities position that the Planning Commission took in awarding the additional point as he did not believe that the project met the literal interpretation of the criteria. He did agree that it would be an added benefit but that it does not meet the literal interpretation under Public Facilities. He felt that all projects were scored literally under this criterion. He did not suggest taking away the point under

Quality of Construction because it is an area that the Council allowed the planning commission a lot of flexibility. It is his hope that the planning commission understands the Council's interest in getting this straightened out before the next competition.

Mayor Kennedy stated that he would support the additional two points as granted by the Planning Commission.

Council Member Carr noted that even with the 2 additional points it would not move the project toward receiving allocations. He inquired whether the total point score for the project in this competition would be important for future competitions.

Planning Manager Rowe said that point scores are bench marks for future competitions. He noted that the Measure P criteria are revisited annual and that changes will have been made to the scoring criteria. Therefore, the project's future score would depend on how much of the criteria still applies. Therefore, he could not provide the Council with a definite answer in terms of how well this project will score in next year's Measure P process.

Council Member Carr stated that he would support the resolution without the 1 point under Public Facilities.

**Action:** *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 2-1 vote with Council Member Carr voting no and Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Resolution No. 5690 with Findings.*

**24. MEASURE P APPEAL APPLICATION AP-03-03: WEST EDMUNDSON-PINN BROTHERS – Resolution No. 5692**

Mayor Kennedy indicated that it was his understanding that the appellant excused himself from the remainder of the meeting.

Planning Manager Rowe presented the staff report and indicated that the Council referred this item back to the planning commission and requested that they conduct a full hearing on each of the items listed in the appeal. He indicated that the appellant was not present at the planning commission meeting to address the specifics of the appeal. He said that the bottom line is that the project contained mistakes in terms of how it was configured based on the two different zoning districts. This resulted in very low scoring in the Housing Needs and Housing Types categories. He felt that these categories can be corrected at the next go around. However, this project is well below the cut off for projects that are in the running for allotment consideration. Upon further planning commission review, the commission is recommending further reductions in the Housing Types category.

Mayor Kennedy opened the public hearing.

John Dossetti stated that this is a common sense project and that he did not know why this project was scored low. He indicated that he was involved in bringing this property into the City because it is a blighted area. He said that the property is located across the street from a new project, 500 feet away from the Vineyard Town Center, it backs up to the George Day residential development, and is located across the street from the Community Park as well as the proposed Indoor Recreation Center. He considered this project to be an infill project.

No further comments being offered, the public hearing was closed.

Council Member Sellers concurred that this is a project that affords an opportunity for infill. He felt that a good thing about the appeal process is that it provided very specific criteria and outlines some of the details on how to make sure that this project receives additional points. He looks forward to seeing this project improve its score next time. He noted that there was a significant gap in the score that the project received and those that will be receiving allotments.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 3-0 vote with Council Member Tate and Mayor Pro Tempore Chang absent, **Denied** the Appeal and **Adopted** Resolution No. 5692 with Findings.*

Council Members Tate and Chang resumed their seats on the dais.

## **26. ZAA-98-20: SPRING AVENUE-WESTPOL PROPERTIES, LLC (MALONE)**

Community Development Director Bischoff presented the staff report. He indicated that this item would need to be tabled following receipt of public testimony to correct the 300-foot adjacent property owner notification mailing list. He stated that this item would be readvertised for a future meeting date.

Mayor Kennedy opened the public hearing.

Allan Palmer said that the heart of the issue before the Council is whether the City of Morgan Hill would require developers to honor agreements that they have voluntarily entered into. He said that the developer should have been fully aware of the restrictions that were included as part of the approved site agreement when they purchased the project. He said that the homes originally approved through the Measure P process were to be approximately 3,000 square with reasonably sized back yards and are now proposed at 3,300 square feet to 4,000+ square feet. He said that the larger homes require a greater portion of the allowable buildable land, leaving less property for backyards. In addition, he noted that this project received additional building allocations in return for dedicated open space. These extra homes provided for additional profits/revenues to compensate for what would be small, less costly homes that were planned attributed to the small lot sizes. This project was allowed to reduce the width of the right of way to increase lot size in light of the hillside. He said that at the planning commission meeting of September 14, 1999, Commissioner Mueller stated that one of the main goals in redesigning this subdivision was to maintain a view of the hillside. He felt that the current owner was aware of the restrictions or should have been notified by their sales agent prior to purchase of the project of the restrictions. If there was a problem for not knowing this fact, he felt that the developer has to take it up



with their sales agent. Should the City grant the request, it may result in a developer not wanting to honor or abide with their contract with the City. He requested that the Council reject this application. He noted that the current fences behind individual properties extend into dedicated open space. He said that each home has a different amount of invasion into the open space.

Mary Paulson stated that she empathizes with developers as they want to make a profit. However, she felt that the price paid for this profit will be paid for by Mother Nature (e.g., encroachment into the hillside). She inquired who will enforce the encroachment into open space, noting that there is no current enforcement beyond the v-ditch demarcation line. She encouraged the Council to retain the dedicated open space as approved.

No further comments being offered, Mayor Kennedy closed the public hearing.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this item.*

Council Member Sellers requested that the Council direct staff to investigate the allegations/concerns about the open space area being violated.

## **25.     DEVELOPMENT AGREEMENT APPLICATION DA-03-03: HALE-GARCIA**

Community Development Director Bischoff indicated that due the appeal process, staff was unable to bring this item to the Council for consideration this evening. Staff recommended that this item be tabled and that it would be agendaized for a future meeting date.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this Item.*

**Action:**        *It was the consensus of the City Council **to consider** item 33 at this time.*

## **33.     HOUSING TYPE DISTRIBUTION AND TERM FOR 2003-2004 MEASURE “P” COMPETITION (FY 2005-2006 BUILDING ALLOTMENT) – Resolution No. 5704**

Planning Manager Rowe presented the staff report, indicating that it is being recommended that the Council authorize a competition be held. Further, that it is being recommended that the distribution of the building allotment for the remaining 51 of the 182 unit total set aside go to the project types identified in the resolution and that the supplemental distribution go to the projects that received allocation. However, should the Council wish to consider an expanded list of projects, the Council would need to modify Section 2.f of the resolution such that it would state that those supplemental allotments would go to projects that participated in the most recent competition for the Fiscal Year 2004-05 and 2005-06 building allotment. Further, if there are any increases in allocations, they would go into the competition process. However, should the City’s population were to increase at a rate greater

than what would be anticipated, staff recommends that the Council not lower the 182 number. This would give projects some certainty that the allocations would be available if they choose to go through the expense and time to compete for allotments.

Mayor Kennedy requested staff clarification about awarding allocations to projects next in line for next year's competition as it relates to amending paragraph 2.f of the resolution.

Planning Manager Rowe recommended that the last sentence of Section 2.f be amended to read: "Any increase in total building allocation be awarded as a supplemental allotment to those projects that participated in the most recent Measure P competition for the Fiscal Year 04-05 and 05-06 building allotment." He stated that this would give the Council the opportunity to consider the next in line project. He clarified that if a project participated in the competition the planning commission could award allotments based on this evening's score and consider whether they want to add projects to the list.

Mayor Kennedy opened the floor to public comment.

Alexander Henson supported the possibility of opening up allocations to those projects that barely missed the cutoff for allotments. The use of the word "participated" would help facilitate this action. He suggested a criteria be included that would help promote affordable housing. He said that the Council could stipulate that "...projects that participated and had a majority of attached dwellings/affordable units for Fiscal Year 2004-05 and 2005-06 in the most recent Measure P competition" be included as part of Section 2.f of the resolution.

Ralph Lyle felt that changing the language to "participated" is good. He felt that the Council could decide later that it wants a special set aside and take this action. However, he felt that inclusion of the language as recommended by Mr. Henson would be a violation of Measure P.

Dick Oliver recommended that the Council retain flexibility and allow the Planning Commission to try and meet the intent. He felt that it would be improper to take 48 units and apply them to these two projects that scored lower, attaining more units than projects which scored higher.

Ms. Dempsey stated that she would be interested in picking up a share of any additional allocations that may become available. She understands that it is probably not right that all the allocations become available just for new projects that are not currently allocated. However, she is making the assumption that the planning commission will make arrangements for the distribution to make it equitable. She felt that this is something that could work because it will bring in two new projects that were close to winning allocations and are considered affordable housing units.

No further comments were offered.

Council Member Sellers stated that he would support the modification to the resolution as recommended by staff. It was his belief that the Council should give the planning commission the opportunity to be flexible and award allotments to the two new projects. However, as it cannot be clarified at this time, he

did not believe that it made sense to try to quantify this by talking about it in terms of being affordable or any other criteria. Should the City wind up with extra units, the planning commission can identify what would make sense and that it would afford the opportunity for some of the projects that were at the edge of the scoring process, and have not yet received allocations, to be considered for allocation as well as for existing projects to be able to gain some possible allocations.

Council Member Carr indicated that he likes the idea of retaining flexibility. It was clear that the three Council Members that participated in the appeal process made it clear that it likes these projects. However, there was a certain way that these projects had to be reviewed. It was his hope that the planning commission will take this into account. He said that the other issue that the planning commission will have to take into account is how the City meets its Housing Element Goals in the City's fair share allocations as these units will be important to meeting these requirements. Building attached, affordable housing units in a certain timeline will be very important. Therefore, this will be another issue that the Council will need to work with developers to make sure that the City is meeting these goals as a community.

Mayor Kennedy encouraged the planning commission to give these appeal projects consideration, particularly the infill aspect of each of the projects. He felt that the three appeal applications have a lot of good qualities in providing the infill closer to the heart of the City.

Council Member Tate noted that he did not participate in the discussion of the appeals and that there is a recommendation to change something on a previous discussion held by the Mayor and two Council Members that he was not allowed to participate in. He was hearing a Council majority support for putting this in the hands of the planning commission to consider a little more than what was allowed in the staff report. He had faith in the planning commission's ability to factor this in and come to the right decision.

Council Member Sellers stated that the proposed amendment would increase the Planning Commission's flexibility with any additional allotments that would become available.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5704, Approving the Total Building Allotment and Distribution, and Authorizing Measure P Competitions to be Conducted During Fiscal Year-2004 for the Balance of the Fiscal Year 2005-2006 Building Allotment, amending Section 2.F as recommended by staff.*

**27. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2003-2004 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT Resolution Nos. 5693, 5694, 5695, 5696, 5697, and 5698**

Deputy Director of Public Works Struve presented the staff report. He informed the Council that staff held a public meeting Monday night and that letters were sent to each of the 219 property owners affected by the assessment districts, inviting them to attend the meeting. The letter informed property

owners that their assessments were being proposed to increase. He indicated that there were no property owners in attendance at said meeting.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** the Resolution Nos. 5693 and 5694, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Excluding the Conte Gardens and Sandalwood Estates Zones.*

Mayor Kennedy recused himself from the next action item and excused himself from the Council Chambers.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** Resolution Nos. 5695 and 5696, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Referring Only to the Conte Gardens Zones.*

Mayor Kennedy resumed his seat on the dais.

Mayor Pro Tempore Chang recused herself from the next action item and excused herself from the Council Chambers.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution Nos. 5697 and 5698, confirming the Fiscal Year 2003-2004 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Referring Only to the Sandalwood Estates Zones.*

Mayor Pro Tempore Chang resumed her seat on the dais.

**28. GENERAL PLAN AMENDMENT, GPA-01-05 AND ZONING AMENDMENT APPLICATION ZA-01-11: CLAYTON-MERLANO – Resolution No. 5699 and Ordinance No. 1626, New Series**

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Negative Declaration.*

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**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5699, Approving the General Plan Amendment Request.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1626, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously **Introduced** Ordinance No. 1626, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT FROM COUNTY A-20 TO CITY R-1 (20,000) SINGLE-FAMILY LOW RESIDENTIAL FOR APPLICATION ZA-01-11: CLAYTON - MERLANO (APN 726-36-045 AND 726-37-006) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**29. GENERAL PLAN AMENDMENT APPLICATION: GPA-02-08: MONTEREY-PINN BROTHERS**

Mayor Pro Tempore Chang indicated that she recently learned that she may have a possible conflict of interest on this item. Therefore, she would be recusing herself from this item and excused herself from the Council Chambers.

Community Development Director Bischoff presented the staff report. He informed the City Council that Vince Burgos advised him that the property owner had to leave the meeting and requested that this item be continued.

Mayor Kennedy opened the public hearing.

William Currie, 225 La Aqua Court, indicated that he was the designated spokesman for the Hidden Creek subdivision which is adjacent to this property. He informed the Council that the residents are in disagreement with the planning commission recommendation. He read into the record a letter from the Hidden Creek subdivision voicing its support for the rezoning of the property adjacent to the subdivision from the current medium density, multi family R-3 to the low density R-2 zoning designation. He stated that the residents support R-1 zoning but are willing to compromise. He stated that the general plan amendment application, as proposed by the Pinn Brothers, meets the residents' requirements. While the residents support their proposal, they would support any proposal that will lower the density of the adjacent property. It is the residents' belief that the proposed plan will provide for a reasonable and consistent graduation of family housing density between the Hidden Creek R-1 residential neighborhood to the commercial zoning along Monterey Road. Hidden Creek residents agree that Morgan Hill needs affordable housing but do not agree that their neighborhood needs to be turned into affordable housing. He indicated that the residents appreciate that the City sends out development proposals to neighborhoods that are being affected.

Mark Grzan said that last time there was development in the area; a 9-foot high wall was built against the creek area. He found this to be concerning. He requested that any future development that occurs along this area be developed in such a way that the development integrates with the creek. He has seen many developers throughout Santa Clara County build huge walls along both sides of the creek to where no wildlife or vegetation can grow. He sees this occurring here with future development. He requested that the City develop a series of ordinances that would require developers to integrate natural features, including creeks and streams, into their development, particular this piece of property.

No further comments were offered.

Director of Community Development Bischoff confirmed that the City does not have an ordinance that specifically addresses the incorporation of creeks and streams into developments. He felt that something along these lines might help to establish some guidelines. He stated that leaving the property designated as R-3 zoning would give much more flexibility to incorporate the creek into the project.

Council Member Sellers stated that the Santa Clara Valley Water District conducted their annual tour this year. He said that one of the tour sites this year was of this area. He said that the Water District has developed several criteria for integrating streams and creeks into development. In looking at the existing wall, it was felt that there were other mitigations that could have been applied. He noted that the creek abuts into backyards. Elimination of the wall would allow free access into private properties. He felt that the City could work with the Water District to mitigate this concern. He stated that the other significant factor is the flood control issues that are still being addressed. Until these are addressed, there are flooding issues with these properties that would take precedent. Therefore, it is a flood control safety issue for those adjacent properties. He felt that integrating the creek and making it a much more attractive thoroughfare would be desirable.

**Action:**                      *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Continued** the public hearing to August 20, 2003.*

Mayor Pro Tempore Chang resumed her seat on the dias.

**30.     GENERAL PLAN AMENDMENT, GPA-03-01/ANNEXATION, ANX-03-03/URBAN GROWTH BOUNDARY/URBAN SERVICE AREA/SPHERE OF INFLUENCE, USA-03-04/ZONING AMENDMENT, ZA-03-05: MALAGUERRA-CITY OF MORGAN HILL BOYS RANCH WATER TANK – Resolution Nos. 5700, 5701, 5702 and 5703 and Ordinance No. 1627, New Series**

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

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- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5700, Approving the General Plan and Urban Growth Boundary Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5701, Approving the Sphere of Influence Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5702, Approving the Urban Service Area Amendment.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1627, New Series (Prezoning).*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously **Introduced** Ordinance No. 1627, New Series as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 2.01 ACRES, FROM CITY OF SAN JOSE R-1-1 AND COUNTY A-20 TO OPEN SPACE OS, APPLICATION ZA-03-05: MALAGUERRA-CITY OF MORGAN HILL (APNS 728-35-03 & 05) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5703, Approving the Annexation.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **31. NEW MORGAN HILL POLICE FACILITY**

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that it would take approximately 9-12 months for the new facility to be completed and the move to take place.

Council Member Sellers inquired whether the police department move would be a gradual process and how the move would be conducted safely. He further inquired whether the City would be precluded from doing anything with the existing police facility until the move is completed or whether there were things the City could get involved with in the interim. He stated that he did not want to see the building located on Main and Monterey remain empty for a long period of time.

Mr. Toy informed the Council that the City currently has issued a statement of interest for the police facility located in the downtown area. Staff anticipates that once the City enters into an agreement with the selected firm, staff would be able to coordinate with the police department versus completing improvements for the selected developer.

Chief of Police Galvin indicated that once the communication center is moved into the new center, the police department would officially be operating in the new facility. He indicated that the police department would remain operational at the old facility until this occurs. He stated that it would take 9-12 months for the move to be completed.

Mayor Pro Tempore Chang indicated that she received a letter from one of the police officers addressing the remaining 6,000+ square foot area. She inquired as to the potential uses for this area?

Chief of Police Galvin informed the Council that a tenant has not been identified. He indicated that he has looked at several tenants who would be compatible with the police department (e.g., sheriff's office, parole officers, etc.). However, the City has not been able to find anyone interested in occupying this space.

City Manager Tewes indicated that when the Council changed the Capital Improvement Program to suggest the purchase of this building, the Council directed him to inquire of other public agencies whether they would be interested in leasing the remaining 6,000+ square foot area. Staff has found that public agencies are not seeking new space. Therefore, there are no current plans for the lease of this area. He noted that the existence of the 6,000+ square foot area was one of the advantages the Council saw in selecting this alternative site as it affords the opportunity to generate income until such time that the area is needed to meet future growth.

Council Member Carr inquired how the tenant improvements would be planned with the initial possibility that the area would be used by a tenant and not be a part of the police department until such time that additional space is needed.

Chief of Police Galvin responded that no improvements are proposed at this point for the excess space. The improvements on this space would be completed at a later time.

Council Member Carr felt that the tenant improvements need to be planned for compatible uses.

Mayor Pro Tempore Chang inquired whether the Redevelopment Agency (RDA) portion of City Hall would be a compatible use.

Chief of Police Galvin responded that a government entity like the RDA would be a compatible use.

Mayor Kennedy opened the floor to public comment.

Mark Brazeal indicated that one thing that is of concern to the police officers is the 6,000+ square feet of empty floor space. He challenged anyone to find an income earning tenant at this time when there is



pristine commercial real estate available all around town. He felt that the City was getting into the business of trying to gain income from the 6,000+ square foot area next to a police facility. He felt that the concept of maintaining the 6,000+ square feet as an income generating rental was an illusion. He said that police officers believe that the space could be incorporated into the new police facility to solve a lot of the challenges it is facing with laying the tenant improvements. When you subtract the parking and the 6,100 square feet, the police facility is down to less than 25,000 square feet of usable space for offices, evidence room, storage, etc. If it is being proposed that this building is to last 25 years, he inquired as to the justification to keep this as empty space. He encouraged the Council to move forward with the new police facility.

City Manager Tewes clarified that 11,000 square feet of the space is being used for indoor parking. He said that one of the advantages of this facility is that the City needs a 30,000 square foot police facility 25-years from now. The City has the opportunity to expand the building envelope to meet this need in the future. He noted that the entire space is not needed today but will be needed sometime in the future. He said that there are two important options: 1) parking need not occur inside, using the 11,000 square feet for office space; and 2) the 6,000+ square foot area, if leased out on a short term basis, allows the City to earn income and make the square footage available when needed for the police expansion.

Officer Brazeal stated that in order to maintain the security of the police facility, the City would have to build a fire wall between the 6,000+ square foot area and the rest of the police facility.

No further comments were offered.

Council Member Sellers felt that the comments were valid concerns. He said that there are some safety measures internally such that the City needs to make sure that there is a fire wall. He said that leasing the 6,100 square foot area may result in over \$100,000 per year in income that can be used to hire another police officer. He stated that the City cannot allow just any use to go into the facility. He felt that the use has to be a specific one and that it may take a period of time before the City finds the right tenant for the facility. He noted that it would be many years in the future that the extra square footage would be needed. If the City can lease the excess area to another agency or appropriate use, receiving sufficient income that would allow the City to bring on another police officer, he felt that this would be a great trade off. He felt that the City needs to continue pursuing leasing the excess area with an appropriate use, taking safety precautions into account both internally and externally to the building.

Mayor Pro Tempore Chang felt that relocating the Redevelopment Agency office to the facility or some other Redevelopment Agency use for the site would be a compatible versus some other use. She recommended that something be done to this extent so that the users of the facility are able to work together and are compatible.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** the City Manager, Subject to City Attorney's Review, to Execute, Make Modifications as Needed, and Take Actions as Necessary to Execute the Lease and Purchase Agreements, and Architectural and Construction*

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*Management Services Agreements to Lease, Acquire and Construct Tenant Improvements at 16200 Vineyard Boulevard.*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** Staff to Proceed with Arranging for the Financing of the Facility.*

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the City Council unanimously (5-0) **extended** the meeting curfew to one hour.*

### **32. GENERAL CONTRACTOR PACKAGE BID RESULTS - MORGAN HILL AQUATICS COMPLEX**

Recreation and Community Services Manager Spier presented the staff report. She informed the City Council that Glenn Ritter, Construction Phase Project Manager; Jim Dumas, public projects manager; and Bob Olson, Nova Partners, were present to answer questions the Council may have.

Glen Ritter reported that on July 8, 2003, the City received three competitive bids from general contractors for the aquatics center project. However, the low bid for the base work for this project was over the approved budget amount. He presented the Council with a supplemental document containing staff and the aquatics complex subcommittee recommendations on how the City can proceed with the aquatics center and still remain on target for a May 28, 2004 grand opening. He said that in order for the City to remain on schedule for the May 28 grand opening, it would be necessary that the base bid contracts be awarded immediately (this evening). He indicated that staff and the subcommittee met on July 14 and are recommending that additional funding be specified from the park development fund in the amount of \$1 million to be applied toward the purchase of the land for the aquatics center. In addition, staff and the subcommittee will be working with the construction manager to identify potential value engineering cost savings or deferred scope items. Staff and the subcommittee would present to the Council a list of cost savings items at a future meeting in order to reduce the contract amount by approximately \$550,000. Should the Council decide to proceed with this project, it will be necessary for the City to engage professional consultants for construction services.

City Attorney Leichter recommended that the Council award the bid predicated on value engineering.

Mayor Kennedy stated that he met with staff on Friday morning to go over the bids at length. He said that the construction manager, Mr. Dumas, Mr. Ritter and others went over the function of the facility. He said that the City could eliminate the integrated colored concrete deck but that you would end up with a drab grey concrete facility. The subcommittee is recommending that this remain in the design. He stated that the Sports Management Group has indicated that in order to maximize the return on investment and get good use of the facility, it would be better to have a six lane instructional pool versus a four lane pool as a six-lane instructional pool would attract toddlers and families. Adding the deep water competition pool at an additional cost of \$7,800 makes the 50-meter pool available for competitive events. He felt that there were a lot of cost items that have already been deleted in the

\$550,000. He felt that a lot of work has been done but that there is still more work to be done. He stated that the subcommittee is recommending that the Council move forward with the aquatics complex, challenging the subcommittee and staff to achieve the value engineering numbers in order to build the level of facility the Council and community would like to see. He recommended that the Council authorize an additional \$1 million in funding. It is felt that these funds can come from the capital improvement project fund.

Council Member Carr said that as the subcommittee reviewed the project on Monday, it became clear that it was similar to the situation the City faced with the Community and Cultural Center. The Council used strategies to accomplish that project to bring this project in as well. As that project moved along and some costs began to escalate, the Council asked the subcommittee to go back and perform value engineering, dictating dollar amounts to be achieved. He said that with each project, the City needs to take costs out of them but not take so much out that it is not worth doing the project anymore. He felt that the significant difference between the aquatics complex versus the Community Center is that the additional dollars that are being recommended in the report this evening are not coming out of the Redevelopment Agency's funding sources. The subcommittee felt that it was important that the City not put at risk any of the other Redevelopment Agency projects by adding additional dollars to this project. He felt that staff came up with a great recommendation in looking at the pot of dollars from the park acquisition funds to help in the actual cost of acquiring the park site that will become the aquatics center/park for the community. He felt that it was important to point out that the recommendation before the Council this evening for additional funding would not take Redevelopment Agency dollars away and apply them to other projects at risk. He agreed that it will be a challenge for the subcommittee and staff to make sure that it is achieving the numbers in value engineering while making sure that the project is one that will bring back the City's return on investment, as anticipated.

Mayor Kennedy opened the floor to public comment.

John Rick, 3215 Oak View Lane, encouraged and urged the Council to keep this project on schedule as the community's need has never been greater as it continues to grow. Due to the lack of capital improvement funds, he indicated that the Morgan Hill Unified School District will be recommending to the Board of Trustees that they demolish the Britton Middle School pool as early as this fall. This would result in one pool remaining in town for the entire community. He indicated that the Aquatics Foundation remains committed to supporting the center and the operations for the entire community. It is the Foundation's goal to have more than \$100,000 in the bank by next September, noting that the Foundation is 22% on the way to achieving this goal. He indicated that two fundraising brew festivals are being planned and a full year's worth of donor brick sales will assist in achieving this goal. He said that it has always been the preferred use of the monies of the Foundation to subsidize operations and maintenance and provide low income scholarships. He stated that the Foundation will remain flexible and work with the City to determine what will be the best use of these funds to be raised for the center.

Mark Grzan said that this is a significant project and is over budget. He said that at the meeting of May or June, the Mayor guaranteed to the Council and the public that this project would not be over budget. He felt that this project is a money pit in so many different ways. He said that the studies that were completed and presented to the Council indicate that no aquatics centers make money. He felt that this

would be a regional facility and would violate the principles of the Parks and Recreation General Plan. He said that the feasibility studies that he has seen require the City to draw from a radius of 25 miles in order to support the center. He did not believe that this was what the public voted for or wanted when they identified this facility. He said that the facility has evolved into a competitive center and that he does not believe that the public realizes that this is the main emphasis of the facility. It was his belief that the 50-meter pool would not be used by the public as it is scheduled to be used almost every weekend in the summer by a competitive end. He felt that this would be the prime time when the public would want to use the facility. He expressed concern that this portion of the aquatics center will draw a significant amount of resources away from the public and will not be used by this community. He stated that the marketing plan was optimistic. He felt that there were options for the City such as: 1) elimination of the 50-meter pool from the project; and 2) expend the recreation portion of the aquatics center in order to serve the residents of the community. It was his belief that the Council should partner with the School District and build a 50-meter pool in conjunction with the Sobrato site. He noted that other cities have partnered with School Districts (e.g., Sunnyvale). Such partnerships allow entities to leverage resources, building a pool while the school maintains it. He felt that these were achievable options and that it was not too late to do so. This would be one way for the City to get the 50-meter pool without impacting the residents of this community with debt. He noted that the City of Sunnyvale has a population of 130,000 and has been in existence for approximately 55 years. He said that this City is just now building its first 50-meter pool and that Morgan Hill's population is ¼ that of Sunnyvale's.

Cindy Azevedo stated that she has seen the number of swimmers increase tremendously with the anticipation of the new aquatics center. She said that both the youth and masters swim programs are bursting through. She felt that the current situation, with limited available pool space available, is extremely crowded but that everyone is getting through it with the anticipation that the aquatics center would be completed by next summer. It is felt that community assets are in need. Above all is the need for the 50-meter pool as it has so many uses above and beyond the six lane lap pool. She urged the Council to keep the project on track as it is direly needed in the community.

Geno Azevedo indicated that the Roseville and Folsom aquatics center are beautifully designed. They are fully functional, provide for multi uses and are tied into the community that surrounds them. It is his hope that the City can achieve these types of facilities. He said that the School District does have a nice pool at Live Oak High School but that come fall and spring, it is hard to get pool time for others. He stated that the same situation would occur at the Sobrato School. He said that that the City was on the right track and that the project will work.

No further comments were offered.

Council Member Tate stated that he does not debate the need for an aquatics complex as one of the facilities that should be provided to the community. However, he felt that arguments could be made for a lot of other types of recreational facilities. He understands that the Council has voted to approve, as an overall priority, the construction of the aquatics center. However, he did not support it and that he could still not support it. He requested that the Council consider looking at the priorities one more time. He felt that the Council owes the seniors and the youth a promised indoor/multi generational recreation center. He did not see how this facility would be built if the Council puts all its funding into the aquatics

center. The Council is not only applying the entire budget of the aquatics center into this project, it is now taking from other funding sources to fund this one project. He did not believe that the playing fields, indoor recreation center or the library projects would come in cheap. He felt that the Council needs to prioritize the projects and pursue those that are of priority. He noted that the Council has not allowed citizens to advocate for these projects. He said that he would prioritize the aquatics center as the number one project but that he did not know if this was the right priority for the community. Therefore he could not support the action this evening and felt that the City is hurting itself by the deadline mentality of opening the project by a certain date. He said that the bids may have come in higher because project developers would have to construct the project with penalties if not completed by the identified date. He said that it was previously argued that bids would be lower because companies would be desperate for work, noting that the bids came in 24% higher than anticipated. He noted that the \$1 million is being taken directly from other projects that the Council could envision as possible prioritize. He felt that the playing fields are a natural use for park funds. He stated that he could not recognize the aquatics complex as the number one priority until the Council goes through a formal prioritizing process. Therefore, he could not support the action, even though there is a need.

Council Member Sellers stated that he had a lot of anxiety over the initial bids. He said that there has been a consistency with other projects. He said that staff and the subcommittee took a hard look and reduced a lot of the things that were going to be incorporated into the facility without losing the integrity of the project. He felt that it was vital to have the recreation and the different components as integral parts. He noted that park acquisition funds are being proposed for this facility. He felt that it would create a difficult proposition to consider utilizing these funds for the recreation facility. He stated that he remains dedicated to making sure that the indoor recreation facility is not compromised with the vision that was set out for it. He felt that the City has been increasingly creative as these projects come before the Council due to experience and because it realizes the constraints with a tighter budget. He does not see a reason, given the City's track record that the Council could continue to proceed with the other projects. He did not understand the statement made that expediting this project was costing the City additional dollars. He said that the City is working toward a May opening in order to maximize the income the City will receive from this project. He stated that he has not found any bids anywhere that significantly increased the costs because of a timing issue. He would agree to proceed with an aggressive schedule but not so that the City is spending dollars unwisely on it. He stated that he would agree to move forward with this project if it is the will of the majority of the Council with the understanding that value engineering needs to be looked at very closely.

Mayor Pro Tempore Chang said that originally, when the Council made the aquatics center the number one priority project, she supported the action. She was concerned with the operating costs. However, as the Council approved the Ford dealership, this portion of the money could be used to construct part of this project. She noted that it is being recommended that \$1 million be taken from the park fund to assist this project. It was her belief that this would be a nice/fun project. If funding is available, she recommended that it be completed. She agreed with Council Member Tate that the Council needs to look at other priorities to make sure that they can proceed. She said that it is anticipated that with every project, the City needs to limit the scope of the work at the beginning. Once the scope is limited, you gradually adjust to the fact that enough funding is not earmarked for a project. She stated that she was

not surprised that the cost for the project is where it is today but that it is her hope that this is the total amount of funding needed to complete the project.

Mayor Kennedy stated that he would be supporting this project but that he was cognizant of the need for a senior center and an indoor recreation center facility. He was confident that Mayor Pro Tempore Chang and Council Member Sellers, working with the Parks and Recreation Commission and staff, will be able to keep this project moving forward as well. He noted that the Council approved over \$8 million for a new police facility this evening. He felt that these are projects that are desperately needed and that they are facilities that the citizens deserve. It is his hope to keep moving forward to deliver the projects that were promised to the citizens.

Council Member Tate emphasized that it was extremely important for the aquatics subcommittee to concentrate on the operational cost and not necessarily minimize the City's outlay of capital at the beginning for the City to achieve a return on capital costs.

Mayor Kennedy indicated that Bob Olsen, the construction manager for the project, has done a great job in sorting through areas to value engineer costs.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-1 vote with Council Member Tate voting no: 1) **Approved** the project plans & specifications and adopted project budget; 2) **Awarded** construction contract to Gonsalves & Stronck in the amount of \$6,354,600 for the General Contractor package base bid only; 3) **Awarded** Phase 2 of construction contract to California Commercial Pools in the amount of \$2,300,000 for the pools package base bid phase 2 only and approved assignment of contract to Gonsalves & Stronck; 4) **Authorized** the City Manager to execute a consultant agreement with Biggs, Cardoso Associates, Inc. for construction testing and inspection, subject to City Attorney approval; 5) **Authorized** the City Manager to execute a consultant agreement with Pacific Geotechnical Engineering for construction soils testing and observation subject to City Attorney approval; and 6) **Specified** that \$1,000,000 of Parks Development Funds (CIP#110097) be allocated toward the purchase of land for the Aquatics Center.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **34. CHAMBER OF COMMERCE ANNUAL REPORT**

**Action:** *By consensus, the Agency Board **Continued** this item to July 23, 2003.*

### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 11:43 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 11:56 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:57 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR REDEVELOPMENT  
AND SPECIAL CITY COUNCIL MEETING  
MINUTES – JULY 23, 2003**

**CALL TO ORDER**

Chairperson/Mayor Kennedy called the special meeting to order at 5:03 p.m.

**ROLL CALL ATTENDANCE**

Present: Agency/Council Members Carr, Chang, Sellers, Tate and Chairperson/Mayor Kennedy

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***Redevelopment Agency and City Council Action***

**CLOSED SESSIONS:**

Mayor/Chairman Kennedy announced the below listed closed session items.

1.

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code 54957

Public Employee Performance Evaluation: City Manager

Attendees: City Council, City Manager

3.

**CONFERENCE WITH LABOR NEGOTIATOR**

Authority: Government Code Section 54957.6

Agency Negotiators: City Manager; City Attorney, Human Resources Director

Employee Organization: Morgan Hill Police Officers Association

4.

**CONFERENCE WITH LABOR NEGOTIATOR**

Authority: Government Code Section 54957.6

Agency Negotiators: City Manager; City Attorney, Human Resources Director



Executive Management Group 1-A

Chief of Police  
Director of Business Assistance & Housing Services  
Director of Community Development  
Director of Finance  
Director of Public Works/City Engineer  
Human Resources Director  
Recreation and Community Services Manager  
Assistant to the City Manager  
Council Services and Records Manager

Middle Management Group 1-B

Police Lieutenant  
Deputy Director of Public Works  
Assistant City Attorney  
Assistant Director of Finance  
Chief Building Official  
Human Resources Supervisor  
Planning Manager  
Senior Civil Engineer  
Senior Project Manager/Community Buildings  
Budget Manager  
Business Assistance and Housing Services Manager  
Police Support Services Supervisor  
Senior Planner  
Project Manager  
Utility Systems Manager  
Recreation Supervisor  
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C

Administrative Analyst  
Secretary to the City Attorney  
Accounting Technician  
Human Resources Assistant

**OPPORTUNITY FOR PUBLIC COMMENT**

Chairperson/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 5:05 p.m.

**RECONVENE**

Chairperson/Mayor Kennedy reconvened the meeting at 7:00 p.m.

### **CLOSED SESSION ANNOUNCEMENT**

Chairman/Mayor Kennedy announced that no reportable action was taken in closed session. He indicated that the Agency/Council would be reconvening to closed session following the regular open session portion of the meeting.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

At the invitation of Chairperson/Mayor Kennedy, Walt Glines, Editor of the Morgan Hill Times, led the Pledge of Allegiance.

### **RECOGNITIONS**

Mayor Kennedy presented Government Technician Jacqui Carrasco with a bouquet of flowers, thanking her for her years of service to the City of Morgan Hill. It was noted that her last day with the City of Morgan Hill would be August 1, 2003.

Mayor Kennedy presented a proclamation to Walt Glines and Carol Holzgrafe of the Morgan Hill Times for their outstanding reporting and photography skills. He noted that the Morgan Hill Times was the honored recipient of the following awards: 1<sup>st</sup> place for General Excellence, 1<sup>st</sup> place for Local Spot News, 2<sup>nd</sup> place for Editorial Comments and 2<sup>nd</sup> place for Photo Essay. The Mayor also presented Sara Ruby of the Pinnacles Newspaper with a proclamation for earning 1<sup>st</sup> place in Feature Photos.

Mayor Kennedy indicated that a Certificate of Recognition has been prepared for Jay Baska, City Administrator for the City of Gilroy, upon his 20<sup>th</sup> anniversary for the City of Gilroy. He indicated that he would present the Certificate to Mr. Baska at an upcoming Gilroy City Council meeting.

### **CITY COUNCIL SUBCOMMITTEE REPORTS**

No reports were presented.

### **CITY MANAGER REPORT**

City Manager Tewes mentioned that the State has not yet adopted the state budget. This leaves the fate of City services up in the air. He stated that the failure to adopt the State budget continues to keep city services at risk. He noted that the City was able to adopt its budget and is faced with many of the same challenges the State is in terms of the affect of the economy. The City is still uncertain as to the potential of the State's budget on the City. It is his hope to report at the August 20 meeting that the State budget has been adopted but that he was not confident about this. He addressed the quality and quantity of water. He indicated that staff has been reporting to the community the City's pride in being able to serve water to the community that meets or exceeds all state standards. He noted that the Council has adopted a very conservative approach to water quality and directed staff to conduct monthly tests of all

City wells for the presence of perchlorate. He was pleased to report that all 13 city wells failed to detect perchlorate and that they all came in at the non-detect levels. He stated that there has been some question as to what non-detect levels mean. He indicated that the state has established 4 parts per billion (ppb) as the action level. The State has established the action level at the lowest level for which there is reliable testing. He said that the City is required to test in accordance with protocols and procedures established by the California Department of Health Services. When the City is stating “non-detect,” the City is stating that it is using the protocols adopted by the State, using the procedures that the laboratories certified by the State use. The laboratories reported that all City well testings came in below 4 ppb. With respect to the quantity of water, he has reported the importance of water conservation, especially in the light of the fact that the City has several wells off line due to concern about the presence of perchlorate. He thanked members of the community who have responded to the call for water conservation, indicating that water conservation is now needed more than ever. He indicated that last night, the City went to the lowest level of storage in the City’s reservoir for the entire year. The reservoir fell to a level that is just above the master plan limits of trying to have a 25% water supply in reserve for any given year. He stated that this reserve is important to provide fire flow, protection, and in the event of mechanical or other reasons that any of the city wells go off line. As the City’s reservoir dropped to its lowest level last night, staff has decided to bring on line one of the wells that had been previously off line for a short period of time in order to try to bring the reservoir levels back up. Staff will be bringing on the Nordstrom well for 8-10 hours this evening in order to bring up the reservoir levels. He stated that as part of the Council’s desire to ensure the quality and quantity of water, the Council has directed staff to proceed with the installation of packaged treatment plants on two wells where the City would be treating for the presence of perchlorate. These are the Tennant Avenue and the Nordstrom wells. Over the past couple of days, staff has been working with the City’s supplier to bring the Nordstrom package plant on line and has been tested under the supervision of the Department of Health Services, indicating that 4 of the 10 vessels did not work. These vessels are being replaced. Therefore, the City will be a few days before it can bring this well back on line. He said that the City continues to perform testing of the Tennant well of the water quality as well as the water columns in order to make sure that the City is drawing water from the appropriate aquifers.

#### **CITY ATTORNEY REPORT**

None.

#### **OTHER REPORTS**

None.

#### **PUBLIC COMMENT**

Mayor Kennedy opened the floor to comments for items not appearing on this evening’s agenda. No comments were offered.

### ***Redevelopment Agency Action***

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**CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 1-3, as follows:*

1.     **PRELIMINARY JUNE 2003 FINANCE & INVESTMENT REPORT**

**Action:** ***Accepted** and **Filed** Report.*

2.     **CONSULTANT AGREEMENT WITH BENCHMARK**

**Action:** ***Authorized** the Executive Director to Execute a Consultant Services Agreement with Benchmark for Fiscal Year 2003-2004 in an Amount Not to Exceed \$402,500, to Provide Project Management Services and Lead Testing for Housing Improvement Programs.*

3.     **REQUEST FOR PROPOSALS FOR THE POLICE BUILDING**

**Action:** ***Authorized** the Executive Director to Issue a Request for Proposal (RFP) to the Three Respondents of the Statements of Interest (SOI) for the Police Facility.*

***City Council Action***

**CONSENT CALENDAR:**

Agency Member Sellers indicated that he would be commenting on consent calendar items 4 and 5 following the approval of the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 4-10, as follows:*

4.     **AWARD CONTRACT FOR CONSTRUCTION OF THE MAIN AVENUE/UNION PACIFIC RAILROAD (UPRR) CROSSING IMPROVEMENT PROJECT**

**Action:** *1) **Approved** an Appropriation of \$245,500 from the Current Year Unappropriated Traffic Impact Fee Fund Balance, and \$86,000 from the Water Fund to Complete Funding for this Project; 2) **Awarded** Contract to Stevens Creek Quarry for Construction in the Amount of \$277,109.50; and 3) **Authorized** 5% Construction Contingency Funds, Totaling \$13,855.*

5.     **AWARD CONTRACT FOR CONSTRUCTION OF BUTTERFIELD LINEAR PARK**

**Action:** ***Awarded** Contract to RMT Landscape Contractors, Inc. for the Construction of the Butterfield Linear Park Project in the Amount of \$377,746.56.*

6.     **APPROVAL OF IMPROVEMENT AGREEMENT FOR SINALOA CAFE**

**Action:** *1) **Approved** the Improvement Agreement; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City with Steven J. Pena.*

7.     **FINAL MAP ACCEPTANCE FOR QUAIL CREEK PHASE II (TRACT 9462)**

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**Action:** 1) **Approved** the Final Map, Subdivision Agreement, and Improvement Plans; 2) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

8. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR DIGITAL DRIVE**

**Action:** 1) **Adopted** the Resolution No. 5705, Accepting the Subdivision Improvements Commonly Known as Digital Drive; and 2) **Directed** the City Clerk to file a Notice of Completion with the County Recorder's Office.

9. **APPROVAL OF LABOR CONTRACT WITH MORGAN HILL COMMUNITY SERVICE OFFICER ASSOCIATION**

**Action:** **Approved** Two-Year Memorandum of Understanding (MOU) with the Morgan Hill Community Service Officers Association (CSOA).

10. **APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 101**

**Action:** **Approved** Two-Year Memorandum of Understanding with AFSCME Local 101.

Council Member Sellers referred to Consent Calendar Items 4 and 5 relating to the Main Avenue Union Pacific Railroad crossing improvement project and the Butterfield Linear project. He said that these are projects that he and many members of the community have been anxious about. He said that Main Avenue narrows significantly at the railroad crossing due to the lack of improvements. He was pleased to see that the City has an agreement to move forward with the improvements. He stated that the linear park along Butterfield Boulevard appeared bleak and that now that the pipes have been installed; the City will see marked improvements. He was pleased to see the extent of the improvements of the trails and the extensive landscaping. He thanked staff for its hard work on these two projects.

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

11. **CHAMBER OF COMMERCE ANNUAL REPORT** (Continued from July 16, 2003)

Director of Business Assistance and Housing Services Toy presented the staff report.

Chairman Kennedy opened the public comment.

Sunday Munnich, Director of the Chamber of Commerce, thanked the City Council and City staff for a great partnership the past year. She indicated that the Chamber Board and Committees felt that a lot has been accomplished. It is felt that the Chamber has a good working relationship with the City and that the Chamber looks forward toward continuing its relationship and the partnerships with the City in the future. She acknowledged Chamber Members in attendance:

Peter Anderson, Tim Hendricks and John Varela, all three serving on the Economic Development Committee (EDC); and Ted Fox, Treasurer of the Board. She indicated that one of the goals for next year is for the Chamber to have more participation and be more visible for the membership, board and committees. She said that this is something that the EDC, the Board and the membership has expressed an interest in doing, including attending more Council meetings, being more visible in the community and being as helpful as possible.

Ms. Minnich highlighted some of the work items accomplished the past year as follows: 1) restructured the EDC and separated it into 2 subcommittees (business attraction and business retention committees); 2) she attended a full day educational conference on economic development through the Chamber of Commerce's Institute Program; 3) a redevelopment of the Chamber's website with a new splash page that includes six links to better promote other entities in Morgan Hill; 4) expanded the economic development section of the Chamber's directory to include 11 pages of economic development to attract businesses into the area; 5) completed a retention survey and conducted a 100% saturation of the businesses in Morgan Hill; 6) partnered with Joyce Maskell and attended workshop on getting the community on track for attracting retail, exhibited at the Monterey International Council of shopping centers trade show and attended the Las Vegas International Council of Shopping Center; 7) held a February South County commercial brokers meeting at the Community Center; 8) planned and held the second Smart Choice event held on May 9 that included approximately 50 attendees which included commercial brokers, developers and site selection professionals as well as professionals in the Morgan Hill area; 9) continue to assist the Downtown Association, noting that she chairs the promotions committee and sits on their board; 10) formed a Tourism Advisory Committee who meets monthly; 11) advertises cooperatively with the Gilroy Visitor's Bureau in the 2002-03 Touring Central California Central Cost Magazine; 12) relocated the Chamber's offices and incorporated a business and visitor center; 13) joined the Silicon Valley Concierge Association and held a joint familiarization trip with Gilroy; 14) participated in a holiday shopping and gift guide program with KSBW during the holidays to help promote shopping in Morgan Hill; 15) developed a gift certificate program to help boost shopping locally; 16) brought the planning of the South County Business Expo back under the planning of the Chamber (the event was held on May 7); 17) put together a women in business advertisement in the San Jose Magazine and contacted local business women owners to participate; 18) partnered with Phil Dean Video Productions to produce a DVD to be played in local hotels on a Morgan Hill Visitors Channel to be up and running within the next week; and 19) partnered with SCORE for business counseling to start up businesses. She thanked the Council for the opportunity to work and partner with the City of Morgan Hill and that the Chamber looks forward to doing so again next year.

Chairman Kennedy indicated that this was excellent report, noting that it has been a very successful year. He stated that the Council appreciates the work that the Chamber performs.

**Action:**        *The Agency Board **Received** Report from the Chamber of Commerce.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **12. ASSESSMENT OF HAZARDOUS VEGETATION MANAGEMENT PROGRAM CHARGES - Resolution Nos. 5706, 5707, & 5708**

Assistant to the City Manager Dile presented the staff report. She informed the Council that Debbie Craver, the Hazardous Vegetation Program Coordinator from the Fire Marshal's Office and she were available to answer any questions that the Council may have on this year's program.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5706, Ordering the Final Report on the 2003 Hazardous Vegetation Program be Transmitted to the County Assessor's Office and That Liens be Posted against the Properties on the Report, Excluding Situs 1, Situs 26, and Situs 27.*

Mayor Pro Tempore Chang recused herself from item 12b and excused herself from the Council Chambers.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5707, Ordering the Final Report on the 2003 Hazardous Vegetation Program be Transmitted to the County Assessor's Office and That Liens be Posted against the Properties on the Report, Referring only to Situs 1 and Situs 27.*

Mayor Pro Tempore Chang resumed her seat on the dias.

Mayor Kennedy recused himself from item 12c and excused himself from the Council Chambers.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** Resolution No. 5708, Ordering the Final Report on the 2003 Hazardous Vegetation Program be Transmitted to the County Assessor's Office and That Liens be Posted against the Properties on the Report, Referring only to Situs 26.*

Mayor Kennedy resumed his seat on the dias.

#### **13. REQUEST TO APPROVE THE ISSUANCE OF TAX-EXEMPT REVENUE BONDS BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY ON BEHALF OF THE NEW MORGAN HILL COUNTRY SCHOOL – Resolution No. 5709**

Director of Finance Dilles presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** the Resolution No. 5709.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **14.     AMBAG (ASSOCIATION OF MONTEREY BAY AREA GOVERNMENTS) REPORT-STRATEGIES FOR INTER-REGIONAL JOBS AND HOUSING BALANCE**

Director of Community Development Bischoff presented the staff report, indicating that AMBAG has sponsored a program entitled Monterey Bay Area Silicon Valley Interregional Partnership which has been established, in part, to look at issues within the region. This region includes Santa Clara, San Benito, Monterey and Santa Cruz Counties and all the cities therein. He informed the Council that City staff has participated in the study and helped to develop the report before the Council this evening. He indicated that the report focuses on interregional jobs/housing balance. This report has been completed as a draft and distributed to all cities within the four counties for review and comment. Once the comments are received from the cities of the four counties, a final report will be prepared and will be considered for adoption in November 2003. He addressed the objectives and strategies at the local, regional and state level, with the idea of trying to improve the balance of jobs and housing throughout the region. He informed the Council that staff has reviewed the report and believe that the report and the objectives are consistent with the City's plans and recommend that the City Council authorize the Mayor to sign the letter of support, mailing it to AMBAG for their consideration. He indicated that Kate McKenna with AMBAG was present to walk the Council through the report and to answer questions the Council may have.

Kate McKenna indicated that the purpose of the study was to support the efforts of the local officials of the four county areas in looking toward the future and seeing where they can work together. She presented a brief introduction about the various phases of the study completed thus far and highlighted the provisions of the draft report that are under consideration by the various jurisdictions. She indicated that an important goal of the study is to specifically work on how the regions can establish a better jobs/housing balance at a county level and at a local jurisdiction/sub area level. She displayed a map that shows future land uses. She addressed growth trends over the next 20 and 25 years as well as some of the limitations/challenges facing the four-county area. The study looked at the effect of the population, jobs, and household increases on commute patterns and compared the year 2000 data base to that of 20 and 25-years out to demonstrate an example of what is expected in the future, including the degree of congested roadways. She addressed the conclusions of the study with respect to growth trends and forecast. She said that overall, it is expected that there will be stable conditions with respect to jobs and housing ratios. Santa Clara County is expected to proportionally add more jobs than households and



that the reverse is expected in the three county Monterey Bay region. She indicated that the highest population and household growth rates are expected to occur in the Monterey Bay Area as well as Gilroy and Morgan Hill areas. Jobs will continue to grow in the existing employment centers. In Santa Clara County, it is expected that housing production rates will remain short in terms of what will be needed with the new jobs that are forecasted while in the Monterey Bay area, the job growth is not keeping up and is not expected to keep up with the high population and household forecast. Therefore, there will be some reverse issues. She indicated that median income in the four counties are not adequate to buy a median priced home and that over time, despite of billions of dollars of planned transportation improvements in the four county areas, traffic congestion is expected to worsen. It is felt that the four counties share the major needs for more housing production and choices as to the types of housing. She indicated that the only good news that can be seen in the forecast was that air quality throughout the area is expected to improve.

Ms. McKenna indicated that the third phase of the study looked at factors (e.g., environmental, fiscal, market place limitations, liability insurance issues, political/land use constraints) that go into making it possible or difficult to improve the balance of jobs and housing. She indicated that the study before the Council looked at the background information pertaining to growth trends looked at the various constraints and opportunities that have been identified over the past year and to see where counties can come together in terms of strategies to make things better. She stated that this was a four step process with the first part including a survey of all planning directors in the approximately 40 jurisdictions that were part of the study area. A search was conducted of role models primarily in California and around the country where regions have come together to deal with these issues. She said that AMBAG is in the phase of requesting local jurisdictions to review and comment on the strategies. The focus of the report, the recommendations and the future discussions by elected officials are intended to be on regional objectives, and to some degree state objectives. She stated that the report is in the midst of undergoing local jurisdiction review of the draft strategies and that Council comments are welcome. Over the next few months, AMBAG will be looking at the comments received and incorporating them, taking the draft strategies report into the final phase of the study, an implementation plan. She stated AMBAG's appreciation of the cooperation and the fine leadership of Mayor Kennedy provided to date.

Mayor Kennedy stated that this study was initiated by San Jose Mayor Ron Gonzales and Marina Mayor Jim Perrine. He said that the committee has been meeting for two years and that the technical advisory committee composed of staff from the various cities has done a great job, noting that the staff of AMBAG has been the primary staff supporting organization to put the study together. He felt that this has been a well worthwhile effort and that it showed good results. He encouraged the Council to continue to support it. He noted a typo on the second to last sentence of the letter to be sent. The sentence should read: "...We believe that a draft report reinforces the City's commitment to achieve its goals of balanced growth."

Mayor Kennedy opened the public comment. No comments were offered.

**Action:** *On a motion by Mayor Pro Tempore Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** the sending of a letter in support of the Findings, Objectives, and Strategies of the AMBAG Report, as amended.*

**15. 2003-2004 CITY WORKPLAN**

Assistant to the City Manager Dile presented the staff report.

Mayor Kennedy opened the public comment. No comments were offered.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** the 2003-2004 Workplan.*

**16. DISCUSSION OF THE BOARD/COMMISSION APPOINTMENT PROCESS**

Council Member Tate indicated that the Council recently went through an appointment process for the majority of boards and commissions that are appointed by the Council. He said that in almost every instance, the Council chose to reappoint the incumbent commissioners. He said that it seems logical that the Council would do so due to the status of ongoing activities within the City being worked on intensely by the various commissions. He said that efforts that have been started need the continuity of commissioners. He indicated that an exception to the appointment process was to that of the Library Commission where an existing commissioner was not reelected. He said that there was a fall out from this by the Library Commission and in the disappointment of the commissioner that was not reappointed. He said that a lot of issues were raised by the Library Commission in questioning why the commissioner was not reappointed. The Commission does not believe that the Council has been consistent in the appointment process. It is felt that the process changes every time the Council goes through the appointment process. The Library Commission asked if there could be a better expectation of consistency in the appointment process. He recommended that the Council needs to address these kinds of issues. He noted that the City is in the middle of a construction project that will be undertaken in the year for a new library. He felt that the existing commission has been intensely involved in this effort and that there is a lot of continuity that will be lost because an existing commissioner was not reappointed. He clarified that he was not advocating that the Council automatically rubber stamp the reappointment of existing commissioners as the Council has to have the opportunity to be able to replace commissioners when it does not feel that commissioners are not serving to the Council's satisfaction. He stated that it was the strong feeling of the entire Library Commission that the one member that was not reappointed was the most heavily contributing member of the commission. The Library Commission questioned whether the Council understood the contributions of the various commissioners. He felt that all these areas need to be discussed and understood so that the Council could address them and move forward in a positive manner.

Mayor Kennedy stated that he tried to think about a way to conduct interviews differently to avoid the removal of a very active member serving on a commission who has done a lot of work. He did not believe that the Council was aware of the work that the library commissioner who was not appointed was doing. One suggestion offered was for the Council to allow some time delay between the time the Council interviews the candidates and the time that the appointments are made. However, even if the Council had done this in this case, he felt that the Council would likely end up with the same conclusion. He concluded that the Council needs to make it a practice or a common policy that the Council finds out

what committees the incumbent commissioners are working/serving on so that the Council understands this before making appointments. He noted that this question was asked at subsequent interviews. He said that this was his attempt to try to avoid this kind of problem.

Council Member Sellers said that it was his belief that the Council tired to limit the number of appointments that it makes as a full Council. It was his recollection that the Library Commission was one that the Council accepted the recommendation of a Council subcommittee for appointments. He stated that he would feel comfortable having a Council subcommittee making recommendations on appointment for the balance of the commissions and committees other than the Planning Commission and Parks and Recreation Commission as this may be a solution. If the Council is not going to utilize a Council subcommittee interview process, the Council needs to figure out how to get a better handle on individuals serving on the commissions. He said that there is a problem when you have individuals who interview well and individuals who serve as great commissioners. He stated that he would be willing to consider an expansion of the commission for this particular commission. He felt that it would be important for the Council to figure out which commissions and committees can be interviewed by a Council subcommittee with the exception of the Planning Commission and the Parks and Recreation Commission and limit the Council's full interview, accepting the recommendation of the subcommittee.

Council Member Tate felt that it would be good to ask the interviewees to comment on their service through more than just the subcommittees as the specific instance that he is discussing was one that had a very active commissioner who attended conferences and read the City's entire application for the library bond act on her own time. She came back and documented the information gathered at the meetings and conferences for the entire Library Commission. He felt that it goes beyond the subcommittees that the commissioners serve on that the Council needs to inquire about.

Mayor Pro Tempore said that in hind sight, the Council should have asked the Council liaison for its opinion on the appointments. She inquired whether there was anything that the Council can do to change the process such as increasing the number of members to the Library Commission.

Council Member Tate said that he would like to fix the process going forward. He noted that the Council already has a nine-member Library Commission that has been was expanded further and that he would not be averse to expanding the library commission membership further if the Council felt that it was something it should do.

Council Member Carr felt that the Council needs to ask better questions or set aside more time for the interview process. He said that he was at a loss as to how to improve the interview process. He did not believe that the Council should go to a subcommittee format because the Council would lose even more. If the Council elects to go to a subcommittee interview format, he felt that it should be done for all commissions as he did not believe that one commission is more important than another commission. Therefore, it was his recommendation that the entire Council should be interviewing for every commission. He felt that it would be incumbent upon the Council to ask better questions. He noted that the Council receives board and commission agendas and minutes. If the Council does not believe that the minutes are accurately reflecting what is taking place at meetings, the Council could ask that the minutes be expanded so that it can understand better what is taking place at the meetings. He felt that

the Council has been pretty rushed when it has conducted the interview process in the past. The Council has not committed a lot of time to conduct the interviews and get to know the applicants. He recommended that additional time be set aside so that each applicant has enough time to make their case and for the Council to ask questions that it needs answers to. He noted that one of the Council's goals in the past was to set up a forum for commissioners in order to have interactions with commissioners. He felt that the Council needs to be more engaged in these types of activities so that the Council can get to know its boards and commissions. The Council could ask that board and commission members present an annual or semi-annual report before the Council. The boards and commissions could advise the Council as to the activities that they have been involved with. He noted that there are only two commissions in which the Council appoints a liaison: the Parks and Recreation and the Library Commissions. He felt that the Council may need to explore having a Council liaison to all boards and commissions as a way for the Council to get more engaged with its boards and commissions.

Mayor Kennedy noted that Council Member Tate is the Council's appointed delegate to the Library Authority and that it has been a logical connection for him to serve in the liaison role to the Library Commission.

Council Member Sellers said that in the interview process the Council is not afforded the opportunity to interact with boards and commission or to have a discussion. He felt that a Council member could have weighed in on how well the library commission has worked together. He suggested a background check as a way to evaluate individuals on their contributions as incumbents to board/commission prior to taking a vote.

Council Member Carr felt that the Council has a process in place that is un-politicized as it seems to be comfortable for the applicant. He stated that he would hate for the interview process to become a political process and not based on its merit. He said that he has found, in the three years he has served on the Council that it has conducted that he has been able to base his appointment on the written application that has been filled out and the interview process conducted. He said that he has been able to consider other factors in the process. He did not know how the Council would be able to address some of the concerns that Council Member Tate is addressing relating to incumbent candidates in terms of what they bring to the table if more time is added to the interview process so that the applicants are given more time to highlight their activities/accomplishments. He also felt that it was incumbent upon the Council to ask better questions.

Council Member Sellers noted that the Council was quite a way from making any further appointments. He recommended that the Council remember this discussion when it goes through the interview process.

Mayor Kennedy said that another approach would be to ask for a report and recommendation from the Council liaison to boards and commissions going into the interview process. This could be information that could only be helpful.

City Clerk Torrez informed the Council that in December, the Council considers its appointments to outside agencies and committees. She inquired whether it was the Council's direction to include the discussion of appointments of Council liaisons to all boards and commissions at that time.

Council member Sellers felt that the Council needs to look at the full context of exactly how much more a Council liaison would add to the process.

Mayor Kennedy indicated that he would like to discuss this issue in a workshop setting on this point.

**Action:**            **No Action Taken.**

#### **17. ECONOMIC DEVELOPMENT SUBCOMMITTEE ROTATION SCHEDULE**

Council Member Tate indicated that there was an earlier discussion where the Council discussed the rotation of the Economic Development Subcommittee (EDS) position. However, he and Council Member Carr got into the development of the EDS Strategy after this discussion. He said that the current EDS Committee feels some ownership to the strategy and would like to see it implemented. He did not feel comfortable coming off the subcommittee until such time that he feels that the strategy is effective and working. He noted that the City is starting to implement some of the provisions and will be receiving feedback.

Council Member Carr noted that the Council recently approved the strategy and that the City is moving forward with some of the implementations that have taken the Council subcommittee some time to prepare. He felt that the subcommittee would be taking steps backward to bring council members up to speed. He noted that the subcommittee is in the middle of a couple of projects that it is working on. In September, when the Council put this subcommittee together, it was the Council's feeling that this should be a rotating assignment. After serving on the subcommittee for several months, he was not sure that the rotating assignment was the right scenario any more. He felt that this subcommittee should be an appointment similar to other appointments made on yearly bases. Like many other Council appointments, a Council Member develops an expertise serving on a committee. He felt that everyone would need to have a familiarization of the City's budget through the Finance and Audit Committee. He felt that this was a subcommittee that one develops a certain niche and a certain understanding as it moves through the different process. He did not believe that a regular rotation through the Council may be the most appropriate way to do so. He recommended that the Council discuss assignment to this subcommittee annually as it does other committees, having the discussion as to who would be best to serve the City in the different assignments.

Council Member Sellers felt that in order to conduct an economic development subcommittee successfully, it would require continuity for the reasons stated by Council Member Carr. He felt that it would be appropriate to have one of the Council Members currently serving on the subcommittee to rotate off and not both rotate off at the same time. He noted that the Council discusses its annual rotation assignment in order to retain some continuity to subcommittees. He recommended that the rotation of this subcommittee be discussed at the annual discussion of the rotation of assignments and that one member be rotated and not both in order to retain continuity.

Mayor Kennedy stated that he would like to discuss this issue at a future workshop. He said that the Council may wish to rotate from some of the current subcommittees. He felt that there was a balance in

developing an expertise in one area and the desire for all council members to be a part of a certain area. He felt that the way the Council has been handling subcommittees has been working, but that it may be a good time to revisit it and discuss what other cities are doing in terms of what works and what does not work. With respect to this committee, he noted that Council Members Carr and Tate have indicated that they would like to wrap up the economic development strategy. He inquired as to the time frame the subcommittee would like to continue to proceed with the strategy.

Council Member Carr felt that this subcommittee should be placed under the normal process for appointments to subcommittees. He felt that this would give the subcommittee the opportunity to proceed with implementation.

Council Member Tate said that the subcommittee is in the RFP process for the downtown. He indicated that the strategy has been approved by the Council. The subcommittee is working on the actions listed on the various strategy points, taking the first couple of steps to make sure that it is a solid strategy. He felt that this may take up to one year.

Mayor Kennedy supported keeping this subcommittee in place to work on the current strategy and create it as a permanent subcommittee. He noted that each council member has expressed an interest in serving on this subcommittee at some point.

Mayor Pro Tempore Chang indicated that she serves as an alternate to this subcommittee and that once the alternate participates on a particular issue, you have to stay on until the issue is over. Serving as an alternate to the subcommittee gave her a taste of the subcommittee and what it is like. She inquired whether this would be a permanent subcommittee.

Council Member Tate noted that the Council discusses once a year its appointments to various committees. He noted that Council Member Carr suggested that the Council discuss appointments to this subcommittee when the Council reviews its assignments.

Mayor Kennedy requested that at the Council workshop, this area be discussed. In the meantime, the Council can continue on the course that it is on.

**Action:**            **No Action Taken.**

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

#### **RECONVENE TO CLOSED SESSION**

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 8:30 p.m.

#### **RECONVENE**

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Chairperson/Mayor Kennedy reconvened the meeting at 9:10 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Chairperson/Mayor Kennedy announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, AGENCY SECRETARY/CITY CLERK**



## **REDEVELOPMENT AGENCY**

**MEETING DATE:** *August 20, 2003*

**Agenda Item # 28**

**Prepared By:**

**BAHS Analyst**

**Approved By:**

**BAHS Director**

**Submitted By:**

**City Manager**

### **FAÇADE IMPROVEMENT PROGRAM**

#### **RECOMMENDED ACTION(S):**

Approve a “triple” Façade Improvement Program (FIP) reimbursement for the vacant building at 17330 Monterey Road (Scoffone).

**EXECUTIVE SUMMARY:** Since its inception in 1991, the Façade Improvement Program (FIP) has provided assistance to over 40 properties. The program provides rebates of up to \$15,000 to property owners for exterior improvements of commercial properties in the downtown, and along the Monterey Road, Dunne Avenue and Tennant Avenue corridors. In addition, it provides up to \$2,000 for architectural/design costs, up to \$4,000 in City Impact Fee reimbursements, and full reimbursement of City Site-and-Architectural-Review fees, when required.

Approximately three years ago, Mr. David Scoffone purchased the vacant building at 17330 Monterey Road, in the heart of downtown. Mr. Scoffone brought proposed façade improvements before the Design Review Committee in the past, but has never proceeded. He now has a new potential tenant for a sports bar/restaurant, but because of the extensive improvements and investment required, he is seeking a “triple” FIP from the Redevelopment Agency. The potential tenant has a proposal in for assistance under the Downtown RFC process.

Staff recommends granting Mr. Scoffone a “triple” FIP because the property is a blight on the downtown; has been vacant for over five years; and is located at a prominent downtown site that is visible from the street, a parking lot and the walkway connecting the two. It is located between two operating restaurants and, in its present condition, adversely affects their business.

The “triple” FIP would rebate up to \$45,000 assuming façade construction costs of \$90,000 or more. It would also include up to \$6,000 in architectural reimbursements, up to \$4,000 for Impact Fees and up to \$3,019 for City Site-and-Architectural Review costs. The total cost could be upwards of \$58,000.

**FISCAL IMPACT:** The BAHS FY03-04 Budget (Fund 317) has sufficient funds for this Façade Improvement Program project.





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

**General Plan Amendment Application: GPA 02-08: Monterey – Pinn Bros.**

### **RECOMMENDED ACTION(S):**

1. Continue this item to meeting of September 17, 2003.

### **EXECUTIVE SUMMARY:**

The applicant is requesting amendment of the General Plan Land Use designation from Multi-Family Medium to Multi-Family Low on approximately 7.5 acres of a 9.68-acre project site. The applicant is also requesting that the boundary between the Multi-Family Medium and Commercial General Plan Land Use designations on the project site be shifted approximately 50 feet east of the present location.

The Planning Commission considered the General Plan Amendment request at the regular meetings of June 10<sup>th</sup> and June 24<sup>th</sup>, 2003. At the June 24<sup>th</sup> meeting, the Commission recommended denial of the request and approval of the eastward shift in the boundary between the Multi-Family Medium and Commercial General Plan Land Use designations. The project was considered by the Council at its regular meeting of July 16<sup>th</sup> and continued to the meeting of August 20<sup>th</sup> due to a family medical emergency. The applicant is requesting further continuance of this item to the regular meeting of September 17, 2003 to allow the applicant sufficient opportunity to speak.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item #29**

**Prepared By:**

\_\_\_\_\_  
**Contract Planner**

**Approved By:**

\_\_\_\_\_  
**Community  
Development Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE:*** August 20, 2003

### **DEVELOPMENT AGREEMENT APPLICATION DA 03-03: HALE-GARCIA**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

#### **EXECUTIVE SUMMARY:**

The applicant is requesting approval of a project development agreement for a twelve-lot subdivision to be constructed on a 22-acre site located on the north side of Basil Ct., on the east side of Dougherty Ave. within the Capriano subdivision. The proposed development agreement would cover phase V of the Capriano project.

On July 10, 2002, the City Council approved a RPD plan for the 65-acre Capriano project. To date the project has pulled 81 building permits, and has installed Dougherty Ave. through the project site connecting to Tilton Ave.

The Capriano project recently received 29 allocations for FY 2004-05 as part of the 2002 RDSCS competition. This development agreement will cover 12 of the 29 allocations from FY 2004-05. The balance of the allocations will be covered under subsequent agreements.

Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the Measure P process and the development schedule for the project. The development agreement covers only 12 of the allotments awarded in the 2002 competition. The 2002 Measure P commitments and a development processing schedule have been included within the agreement as Exhibit A. The public and private improvements required with the 12 allotments have been prorated within the agreement (paragraph 14).

This application was reviewed by the Planning Commission at its July 15, 2003 meeting. The Commission voted 7-0 recommending approval of the Development Agreement, as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

**FISCAL IMPACT:** No budget adjustment required.

**Agenda Item # 30**

**Prepared By:**

\_\_\_\_\_  
**Senior Planner**

**Approved By:**

\_\_\_\_\_  
**Director of Community Development**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

**ORDINANCE NO.       , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL APPROVING DEVELOPMENT AGREEMENT,  
DA-03-03: HALE-GARCIA (APN 764-09-27 and 764-09-026)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 03-17a, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-03: Tilton-Glenrock	29 Single-Family Homes

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance (and attached hereto) are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 20<sup>th</sup> Day of August 2003, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of September 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3<sup>rd</sup> Day of September, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** August 20, 2003

**ZAA 98-20: SPRING AVE.-WESTPOL PROPERTIES, LLC (MALONE)**

### **RECOMMENDED ACTION(S):**

Open/close Public Hearing

Adopt Resolution denying request to amend the precise development plan.

**EXECUTIVE SUMMARY:** This item was tabled at the July 16 meeting due to an incomplete mailing list submitted by the applicant. A complete mailing list of all properties within 300ft. has been prepared by city staff and the application has been re-noticed.

The applicant is requesting an amendment to the adopted precise development plan to allow an adjustment of the open space limit line on 14 lots within the 21 lot Spring Manor subdivision located on the south side of Spring Ave. adjacent to the west side of the Mt. Hope cemetery.

In October 1999, the City Council adopted a precise development plan for the 15.28 acre site. The adopted precise development plan clustered the 21 single family homes toward the north side of the site along Spring Ave. The precise development plan also included a development limit line which required all land on slopes in excess of 10 percent to be left as open space. The purpose of the open space easement was to prohibit the encroachment of backyard improvements up the hillside. However, a couple of the new residents have encroached into the open space area with landscape improvements consisting of trees and shrubs. These landscaping improvements are prohibited under the current open space easement which prohibits any alteration of the land above the open space limit line.

The boundary of the 10 percent slope line is delineated on the site by the location of a “v” ditch drainage swale. The project’s owner/developer, Andy Latala of Westpol Properties LLC. has submitted a request to amend the limits of the open space area from the 10 percent slope line to the 20 percent slope line. The attached diagram, Exhibit A, shows the existing and proposed open space boundary lines. In his letter (attached) he indicates that the lack of useable outdoor area behind the homes has inhibited the sale of several homes within the subdivision.

The Planning Commission considered this request at their June 24 meeting. The Commission voted 5-1 (Commissioner Mueller voting against) to recommend City Council denial of the request to amend the boundary of the open space easement. The Commission concurred with the staff recommendation that the precise development plan should not be altered and the hillside should be preserved in its natural state as originally agreed to in the RPD. The Commission noted that the building envelopes created on the lots were more than adequate to accommodate homes and useable outdoor space. The developer was aware of the open space restriction when he purchased the subdivision and the Commission observed it was his choice to construct larger homes that left smaller outdoor areas. A copy of the June 24 staff report and meeting minutes are attached for the Council’s reference.

If the Council wishes to approve the amendment request, the item should be continued to the September 3 meeting so a resolution for approval may be provided for Council action.

**FISCAL IMPACT:** No budget adjustment required.

**Agenda Item #31**

**Prepared By:**

**Senior Planner**

**Approved By:**

**Director of Community  
Development**

**Submitted By:**

**City Manager**

## **RESOLUTION NO.**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DENYING A REQUEST TO AMEND THE OPEN SPACE EASEMENT LIMITATIONS WITHIN THE PRECISE DEVELOPMENT PLAN FOR THE SPRING MANOR RESIDENTIAL PLANNED DEVELOPMENT.**

**WHEREAS**, such request was considered by the City Council at their regular meeting of August 20, 2003, at which time the City Council did not approve of application ZAA-98-20: Spring Ave.-Westpol Properties LLC; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE  
AS FOLLOWS:**

**SECTION 1.** The proposed RPD amendment is inconsistent with the original purpose of the development plan adopted under Ordinance 1458.

**SECTION 2.** The preservation of the open space area was a consideration in the application of the Single Family low General Plan land use designation and the rezoning of the property to R-1 12,000/RPD.

**SECTION 3.** The City Council finds that the proposed amendment to the precise development plan is inconsistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code, by decreasing the amount of open space retained within the project.

**SECTION 4.** The City Council finds that the building envelopes created on the lots within the subdivision were adequate to accommodate homes and useable outdoor space.

**SECTION 5.** The developer was aware of the open space restriction when he purchased the subdivision. The restricted outdoor useable area is a result of a choice to construct large homes on the parcels. The execution of this choice does not provide sufficient justification to amend the open space easement within the RPD.

**SECTION 6.** The City Council hereby denies the RPD amendment request.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 20<sup>th</sup> Day of August, 2003, by the following vote.

**AYES:**           **COUNCIL MEMBERS:**  
**NOES:**          **COUNCIL MEMBERS:**  
**ABSTAIN:**   **COUNCIL MEMBERS:**  
**ABSENT:**      **COUNCIL MEMBERS:**

**🦉 CERTIFICATION 🦉**

**I, MOIRA MALONE, DEPUTY CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on August 20, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**MOIRA MALONE, Deputy City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

### **ADOPT ORDINANCE REGARDING RESTRICTING DISKING ON VACANT LAND**

#### **RECOMMENDED ACTIONS:**

1. Open Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

#### **EXECUTIVE SUMMARY:**

In April 1999, the City adopted an amendment to the Community Development Plan for the Ojo de Agua area. The environmental impact report prepared for the amendment noted impacts to burrowing owls, and imposed mitigation measures for such impacts. In June, 2003, the City Council adopted a burrowing owl mitigation plan. That plan requires the City to adopt an ordinance placing appropriate restrictions on disking.

Staff recommends that the Council adopt the attached ordinance. It is modeled after a similar ordinance adopted by the City of San Jose, but has been tailored to reflect the more rural and hillside characteristics of Morgan Hill.

The ordinance applies to all parcels over two acres (or contiguous parcels that together have over two acres) where grassland and/or mixed herbaceous vegetation exists; or any parcel where burrowing owls have been sighted in the previous three years. These parcels must use other methods of weed control instead of disking.

#### **Exemptions include:**

- property located outside the Hazardous Fire Boundary as set by the Santa Clara County Fire Department – this will exempt hillside properties which are not burrowing owl habitat;
- portions of property actively used for agriculture, if disking is performed in connection with that agricultural activity;
- non-owl habitat as certified to the City by a qualified ornithologist;
- portions of property disked for fire break purposes (with limitations on size and placement of such fire breaks); or
- property which is less than two acres and which contains a dwelling unit used for residential occupancy.

**FISCAL IMPACT:** No budget adjustment required. Funds for the development of this ordinance were assumed within the City Manager's and City Attorney's existing budgets.

**Agenda Item # 32**

**Prepared By:**

**Helene Leichter**  
**City Attorney**

**Submitted By:**

**J. Edward Tewes**  
**City Manager**



**ORDINANCE NO. , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MORGAN HILL ENACTING CHAPTER 8.80 (Disking  
Restrictions) OF TITLE 8 (HEALTH AND SAFETY) OF THE  
MUNICIPAL CODE OF THE CITY OF MORGAN HILL  
REGARDING RESTRICTIONS ON DISKING VACANT LAND**

WHEREAS, in April 1999, the City of Morgan Hill Redevelopment Agency amended its redevelopment plan and adopted, in conjunction with the City of Morgan Hill, a Final Program Environmental Impact Report; and,

WHEREAS, as part of the FEIR, the City agreed to prepare a city-wide burrowing owl mitigation plan; and,

WHEREAS, since 1999 the City has implemented interim measures to protect the burrowing owl until the adoption of the city-wide burrowing owl mitigation plan; and,

WHEREAS, on June 4, 2003, the City Council of the City of Morgan Hill adopted the Citywide Burrowing Owl Habitat Mitigation Plan; and,

WHEREAS, the Plan states that “to maintain the highest owl population levels possible in the interim period when Preserve Lands are being acquired and restored, the City shall adopt an ordinance placing appropriate restrictions on disking”; and,

WHEREAS, the City Council has duly considered appropriate restrictions on disking, balancing the need to protect burrowing owls and the imposition of such restrictions on landowners in the community.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

**Section 1.** Chapter 8.80 (Disking Restrictions) of Title 8 (Health and Safety) is hereby added to read as follows:

**8.80.010 Disking restrictions.**

A. Except as specifically provided in Sections 8.80.020 and 8.80.030, it shall be unlawful for any person or entity to disc, plow or otherwise break into or turnover soil upon any real property within the city at any time or for any purpose, including, without limitation, for weed or vegetation management or abatement purpose, if the real property, or portion thereof, meets one of the following criteria:

1. The real property, by itself or together with any contiguous real property, constitutes an area that is two acres or greater in size, and that real property, or the portion thereof that constitutes an area that is two acres or greater in size, supports grassland and/or mixed herbaceous vegetation where water is not applied for the purpose of growing short grasses or agricultural products; or

2. There is known to be one or more occupied burrowing owl burrows present on a real property of any size at any time within the immediately preceding thirty-six-month period.

B. For the purposes of this chapter, real property shall be considered contiguous even if it is separated by a street or roadway that does not exceed 100 feet in width, utility easement, railroad right-of-way or other similar feature, element or facility.

C. For the purposes of the chapter, a burrowing owl burrow shall be considered occupied when a burrowing owl is currently using the burrow, or has used the burrow at any time within the immediately preceding thirty-six-month period even if the burrow is temporarily unoccupied.

**8.80.020 Exemptions.** The provisions of Section 8.80.010 shall not apply to the disking or plowing activities described in Section 8.80.010 performed on:

A. That portion of real property that is actively being used for the production of agricultural products, when the disking activity is performed in connection with that agricultural production activity; or

B. Real property that is less than two acres in size and upon which a dwelling unit is located that is being used solely for residential occupancy; or

C. That portion of real property that is disked for fire break purposes along the perimeters of real property adjacent to roadways, creeks, and buildings or through the middle of real property if needed to create interior fire breaks in parcels greater than five acres, provided, however, that such fire breaks may not exceed thirty feet in width; or

D. Real property located in areas that have been identified by the city, upon the advice of a qualified ornithologist, as having little or no potential as burrowing owl nesting habitat. The locations and boundaries of these areas, and any changes, deletions or other modifications thereto, shall be set forth in a resolution adopted by the city council; or

E. Real property, located within the Hazardous Fire Boundary, as adopted by Santa Clara County Fire Department.

**8.80.030 Exception - Development activity.** This chapter is not intended to and shall not be used or interpreted to prevent or prohibit the development or improvement of real property pursuant to and in full compliance with all planning, building or grading permits or approvals.

**Section 2. Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 3. Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 20<sup>th</sup> Day of August 2003, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of September 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3rd Day of September, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *August 20, 2003*

### **APPLICATION ZA-03-06: ZONING TEXT AMENDMENT/ MOBILE HOME CONVERSIONS**

#### **RECOMMENDED ACTION(S):**

1. Open/close Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**EXECUTIVE SUMMARY:** The City is requesting to amend Title 18 of the Municipal Code, specifically Sections 18.30.010, 18.30.020, 18.30.050, and 18.30.110 of Chapter 18.30 (PUD, Planned Unit Development District), to be consistent with the City's new Mobile Home Conversion Ordinance.

The City is currently in the process of finalizing a new Mobile home Park Conversion Ordinance. The purpose of the ordinance is to facilitate the conversion of mobile home parks to resident ownership. The ordinance also establishes requirements and procedures for the conversion of mobile home parks to other uses. The ordinance is a City-initiated effort to fill a gap in state law regarding the conversion of mobile home parks, and to ensure that approval of proposed conversions is consistent with the policies and objectives of the City of Morgan Hill. The draft "Mobile Home Park Conversions to Resident Ownership or to Any Other Use" Ordinance will be considered as a separate item on the August 20 Council agenda.

The proposed mobile home park conversion ordinance contemplates that conversions will be primarily accomplished by the use of planned unit development zoning. Therefore, amendments to Chapter 18.30 (PUD Planned Unit Development District) of the Morgan Hill Municipal Code are required to address mobile home park conversions. Specifically, text amendments are proposed to the following sections: Section 18.30.010 (Purpose of District), Section 18.30.020 (Permitted Uses), Section 18.30.050 (Development Plan—Contents—Submittal), and Section 18.30.110 (Exception to Development Standards). The Planning Commission, at their July 22, 2003 meeting voted 7-0 to recommend approval of the above amendments to the PUD Chapters as outlined in the attached Ordinance.

As noted above, the Mobile Home Conversion Ordinance will be considered as a separate action on the August 20 agenda. The Commission recommended a few minor edits and one change to proposed Mobile Home Conversion Ordinance under Section 17.384.20. The recommended change is to establish an upper limit to the cost of replacement housing or to stipulate that replacement housing must be comparable to the cost of the mobile home unit. The City Attorney will address the Planning Commission's comments in the separate staff report on Conversion Ordinance. The attached Planning Commission staff report and July 22, 2003 meeting minutes provide additional background information on this item.

**FISCAL IMPACT:** Cost of the Zoning Text Amendments for the Mobile Home Conversion Ordinance has been accommodated in the existing City Attorney's Office and Business Assistance and Housing Service budgets.

**Agenda Item # 33**

**Prepared By:**

**Planning Manager**

**Approved By:**

**Community  
Development Director**

**Submitted By:**

**City Manager**

**ORDINANCE NO. , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 18.30.010, 18.30.020, 18.30.050, AND 18.30.110 OF CHAPTER 18.30 (PUD PLANNED UNIT DEVELOPMENT DISTRICT) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING AMENDMENT FOR CONSISTENCY WITH MOBILE HOME CONVERSION ORDINANCE**

WHEREAS, the City is adopting an ordinance governing the conversion of mobile home parks to community mobile home parks, mobile home park condominiums, and non-mobile home park uses; and,

WHEREAS, the ordinance contemplates that such conversions shall be primarily accomplished by use of a planned unit development zoning; and,

WHEREAS, the City's current zoning provisions governing Planned Unit Developments must be amended to include mobile home conversions.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

**Section 1.** Section 18.30.010 (Purpose of District) of Chapter 18.30 (PUD Planned Unit Development District) of Title 18 (Zoning) is hereby amended to read as follows:

18.30.010 Purpose of District. The purpose of the planned unit development (PUD) district is to facilitate and promote coordination of design, access, use, and other features associated with development of multiple adjacent properties or single properties. The district is also intended to allow diversification in the relationship of various buildings, structures and open spaces in planned building groups, and the allowable height of the buildings and structures, while insuring substantial compliance to the district regulations and other provisions of this chapter. ***In addition, the district is intended to regulate the conversion of mobile home parks to resident ownership parks or other uses.*** Adequate standards related to the public health, safety and general welfare shall be observed without unduly inhibiting the advantages of large-scale site planning for residential, commercial or industrial purposes.

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**Section 2.** Section 18.30.020A (Permitted Uses) of Chapter 18.30 (PUD Planned Unit Development District) of Title 18 (Zoning) is hereby amended to read as follows:

A. All uses may be permitted in a PUD district, provided such uses are shown on the development plan for a particular PUD district as approved by the City Council. ***An exception shall apply to a PUD district established for a mobile home park conversion, in which case the permitted uses shall conform to the underlying General Plan land use designation.*** All uses must meet the performance standards established in Chapter 18.48 of this title. In the case of a city-initiated PUD, subsequent development plans must specify the range of uses to be allowed.

**Section 3.** Section 18.30.050 (Development Plan—Contents--Submittal) of Chapter 18.30 (PUD Planned Unit Development District) of Title 18 (Zoning) is hereby amended in the first paragraph to read as follows:

18.30.050 Development Plan—Contents—Submittal.

A request for the establishment of a PUD district shall be accompanied by a development plan, unless it is initiated by the city, in which case the development plan shall be submitted by the first applicant proposing to develop within the PUD subsequent to its establishment by the city. The development plan shall define the general manner in which the PUD will develop and include the following information. The development plan shall encompass and apply to all properties in the PUD. ***For mobile home park conversion to ownership parks, no development plan will be required.***

Subsections 1 through 4d of Section 18.30.050 shall remain as remain written.

**Section 4.** Section 18.30.110 (Exception to Development Standards) of Chapter 18.30 (PUD PLANNED UNIT DEVELOPMENT DISTRICT) of Title 18 (ZONING) is hereby amended to read as follows:

18.30.110 Exception to Development Standards. An exception to the minimum development standards established in Section 18.30.090 ***and Section 18.30.100*** may be approved by the City Council . . . .

**Section 5.** **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 6.** **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 20<sup>th</sup> Day of August 2003, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of September 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3<sup>rd</sup> Day of September, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

### **ADOPT ORDINANCE REGARDING MOBILEHOME PARK CONVERSIONS TO RESIDENT OWNERSHIP OR TO ANY OTHER USE**

#### **RECOMMENDED ACTIONS:**

1. Open Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

#### **EXECUTIVE SUMMARY:**

Recently, several mobile home parks in the Bay Area have converted to other uses, including condominiums and commercial development. In order to address the impact of such changes in use on park residents, several jurisdictions have enacted ordinances detailing steps park owners must take before a use change will be approved, and requiring mitigation measures be adopted to aid displaced park residents.

Government Code sections 65863.7 [Zoning and Planning Law] and 66427.4 [Subdivision Map Act] allow the City Council to require certain action from a park owner when a park is converted, including the filing of a report on the economic impact of the conversion. Pursuant to this authority, the City Council may also impose mitigation measures on the conversion to mitigate the adverse impact of the conversion on the ability of displaced mobile home park residents to find adequate housing.

Staff recommends that the Council adopt the attached ordinance approval to protect the interests of mobile home residents should the park owners decide to convert the property. It is modeled after similar ordinances adopted by the Cities of San Jose, Santa Clara and Sunnyvale.

The ordinance requires that park owners must give adequate notice to residents and the State of California of their intent to convert the park (120 days prior to filing an application for conversion with the City), and then engage interested park residents in negotiations for purchase of the park by the residents. The ordinance also requires the park owner to file certain information with the City along with the standard land development application, including an appraisal of each lot and mobile home unit within the park. Following a public hearing, the owners must abide by a relocation plan, which includes temporary rental and purchase assistance to the park residents.

The ordinance has been reviewed and approved by the Mobile Home Rent Commission and Planning Commission.

**FISCAL IMPACT:** No budget adjustment required. Funds for the development of this ordinance were assumed within existing departmental budgets.

**Agenda Item # 34**

**Prepared By:**

**Helene Leichter**  
City Attorney

**Submitted By:**

**J. Edward Tewes**  
City Manager



**ORDINANCE NO. \_\_\_\_\_ N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING CHAPTER 17.38 (MOBILE HOME PARK CONVERSIONS TO RESIDENT OWNERSHIP OR TO ANY OTHER USE) OF TITLE 17 (SUBDIVISIONS) OF THE MORGAN HILL MUNICIPAL CODE**

WHEREAS, several mobile home parks in the greater Bay Area have recently been converted to condominium or other uses, thereby displacing residents; and,

WHEREAS, many residents of mobile home parks in Morgan Hill have low or moderate incomes; and,

WHEREAS, low or moderate income replacement housing is difficult to secure in the Morgan Hill area; and,

WHEREAS, to facilitate the conversion of mobilehome parks to resident ownership, inform prospective conversion purchasers about the physical conditions of the structures and land offered for purchase, and to reduce and avoid the displacement of long-term residents, particularly senior citizens and low and moderate income households, from parks; and,

WHEREAS, the City Council finds that the adoption of this ordinance is necessary to ensure a systematic method for regulation of the above-mentioned interests, and to foster the health, safety and welfare of the citizens of Morgan Hill.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.** Chapter 17.38 (Mobile home Park Conversions to Resident Ownership or to Any Other Use) of Title 17 (Subdivisions) of the Morgan Hill Municipal Code is hereby amended to read as follows:

**Chapter 17.38  
MOBILE HOME PARK CONVERSIONS TO RESIDENT  
OWNERSHIP OR TO ANY OTHER USE**

**Parts:**

- 1. General**
- 2. General Requirements**
- 3. Mobile home Park Conversions to Ownership**
- 4. Mobile home Park Conversions of Use**

**Part 1**  
**GENERAL**

**Sections:**

- 17.38.010 Purpose of chapter.**
- 17.38.020 Definitions.**
- 17.38.030 Association.**
- 17.38.040 Common area.**
- 17.38.050 Common interest development.**
- 17.38.060 Community mobile home park.**
- 17.38.070 Condominium.**
- 17.38.080 Condominium mobile home park.**
- 17.38.090 Conversion project.**
- 17.38.100 Developer.**
- 17.38.110 Designated resident organization.**
- 17.38.120 Disabled mobile home owner.**
- 17.38.130 Low income.**
- 17.38.140 Mobile home.**
- 17.38.150 Mobile home lot.**
- 17.38.160 Mobile home owner.**
- 17.38.170 Mobile home park.**
- 17.38.180 Mobile home park conversion to ownership.**
- 17.38.190 Mobile home park conversion of use.**
- 17.38.200 Mobile home resident.**
- 17.38.210 Mobile home tenant.**
- 17.38.220 Organizational documents.**
- 17.38.230 Recreational open space.**
- 17.38.240 Right of first refusal.**
- 17.38.250 Unjust eviction.**

**17.38.010 Purpose of chapter.**

A. This Chapter is enacted to establish requirements and procedures for the control and approval of the conversion of Mobile home parks to community Mobile home park, Mobile home park Condominium, and non-Mobile home park uses. By their nature, Mobile home park Conversion projects differ specifically from other types of projects. The unique status of such projects tends to magnify the effects associated with higher urban densities to the point where they may lead to conditions of mismanagement, neglect, and blight that impact upon the public health, safety, welfare, and economic prosperity of the City of Morgan Hill. Such projects may conflict with the policies of the City of Morgan Hill to provide a variety of individual choices of tenure, type, price, and location of housing and to maintain the supply of Mobile home housing for low and moderate income persons and families. To ensure that such problems are avoided in both short- and long-term, it is the express intent of the council of the City of Morgan Hill to treat Mobile home park Conversion projects differently from other projects, and to establish rules and standards

regulating such projects in the City of Morgan Hill.

B. This Chapter is enacted to ensure that approval of proposed conversions is consistent with policies and objectives of the City of Morgan Hill, particularly the following:

1. To make adequate provision for the housing needs of all economic segments of the community;
2. To facilitate resident ownership of Mobile home parks, while recognizing the need for maintaining an adequate inventory of rental space within Mobile home parks;
3. To provide a reasonable balance between Mobile homes and other types of housing;
4. To inform prospective conversion purchasers about the physical conditions of the structures and land offered for purchase;
5. To reduce and avoid the displacement of long-term residents, particularly senior citizens, the disabled, those who are of Low income, and families with school-age children, who may be required to move from the community due to a shortage of replacement Mobile home housing.

**17.38.020 Definitions.** For the purpose of this Chapter, certain words and phrases are defined in this part and shall be construed as herein set forth unless it shall be apparent from their context that a different meaning is intended.

**17.38.030 Association.** "Association" means the organization of persons who own a Condominium space or have right of exclusive occupancy in a Mobile home park Condominium or community Mobile home park.

**17.38.040 Common area.** "Common area" means the entire area within a Condominium Mobile home park or community Mobile home park, except the separate interests therein.

**17.38.050 Common interest development.** "Common interest development" means a real property development as defined in Civil Code Section 1351(c).

**17.38.060 Community Mobile home park.** "Community Mobile home park" means a Common interest development in which an undivided interest in the Mobile home park is coupled with the right of exclusive occupancy of a Mobile home lot located therein.

**17.38.070 Condominium.** "Condominium" means an estate in real property as defined in Civil Code Section 1351(f).

**17.38.080 Condominium Mobile home park.** "Condominium Mobile home park" means a Mobile home park Common interest development consisting of Condominiums.

**17.38.090 Conversion project.** "Conversion project" means the term used to include Mobile home park conversion to ownership and Mobile home park conversion of use, as defined in this

part.

**17.38.100 Developer.** "Developer" means the owner or subdivider with a controlling proprietary interest in the proposed Mobile home park Conversion project. If no one owner or subdivider has a controlling proprietary interest, this term shall mean each and every owner or subdivider.

**17.38.110 Designated resident organization.** "Designated resident organization" means any Association of Mobile home owners within a Mobile home park which has, not later than sixty (60) days after issuance of a notice of intent to convert under Section 17.38.340, provided the owner or manager of the Mobile home park written notice of the following:

1. The name and address of the organization.
2. The name and address of the representative of the organization to whom all notices under this Chapter shall be given.

3. A statement that the organization is interested in purchasing the Mobile home park. The organization must demonstrate that, as of the date of giving notice to the owner or manager, it represents at least sixty-seven percent (67%) of all such owners for purposes of this ordinance.

**17.38.120 Disabled Mobile home owner.** "Disabled Mobile home owner" means a Mobile home owner who is the primary wage earner of a household, or a single person, with any medically determinable physical or mental impairment limiting his or her mobility, substantially affecting his or her ability to obtain employment, or requiring special care facilities in the Mobile home. "Physical or mental impairment" is an impairment that results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical or laboratory diagnostic techniques.

**17.38.130 Low income.** "Low income" means eighty percent or less of the current median income as established annually by the U.S. Department of Housing and Urban Development (HUD) for the Morgan Hill Standard Metropolitan Statistical Area (SMSA) as adjusted for household size.

**17.38.140 Mobile home.** "Mobile home" means a structure transportable in one or more sections, designed and equipped to contain not more than one or two dwelling unit(s), to be used with or without a foundation system.

**17.38.150 Mobile home lot.** "Mobile home lot" means a portion of a Mobile home park designated or used for the occupancy of one Mobile home, including but not limited to storage, parking and landscaped areas intended for the private use and/or care of the Mobile home resident.

**17.38.160 Mobile home owner.** "Mobile home owner" means a person who has the right to the use of a Mobile home lot within a Mobile home park on which to locate, maintain, and occupy a Mobile home, lot improvements and accessory structures for human habitation, including the use of the services and facilities of the park.

**17.38.170 Mobile home park.** "Mobile home park" means an area of land where two or more Mobile home lots are rented or leased, or held out for rent or lease, to accommodate Mobile homes used for human habitation.

**17.38.180 Mobile home park conversion to ownership.** "Mobile home park conversion to ownership" means the conversion of an existing Mobile home park containing four or more Mobile home lots to a Condominium Mobile home park or to a community Mobile home park.

**17.38.190 Mobile home park conversion of use.** "Mobile home park conversion of use" means the conversion of an existing Mobile home park containing four or more Mobile home lots to any other use, excluding Mobile home park conversion to ownership. The elimination of individual Mobile home leasehold or rental agreement interests in a Mobile home park shall not constitute conversion.

**17.38.200 Mobile home resident.** "Mobile home resident" means a person, including a Mobile home owner or Mobile home tenant, who occupies a Mobile home.

**17.38.210 Mobile home tenant.** "Mobile home tenant" means a person who rents or leases a Mobile home from a Mobile home owner.

**17.38.220 Organizational documents.** "Organizational documents" include the declaration of covenants, conditions and restrictions, articles of incorporation, bylaws, and any contracts for the maintenance, management or operation of all or any part of a Mobile home park conversion to ownership project.

**17.38.230 Recreational open space.** "Recreational open space" means open space (exclusive of the required front setback area) which shall be used exclusively for leisure and recreational purposes, for the use and enjoyment of occupants (and their guests) within the Condominium Mobile home park or community Mobile home park, and to which such occupants (and their guests) shall have the right of use and enjoyment. Accessory structures such as swimming pools, recreational building, and landscaped areas may be included as open space.

**17.38.240 Right of first refusal.** "Right of first refusal" means an irrevocable, nontransferable, and preemptive right to purchase an interest in a Common interest development at a price no greater than the price offered to the general public for such interest.

**17.38.250 Unjust eviction.** "Unjust eviction" means the termination of tenancy by a Mobile home park landlord for reasons other than those stated in California Civil Code Section 798.56, or its successor.

## **Part 2**

### **GENERAL REQUIREMENTS**

#### **Sections:**

- 17.38.300 Applicability of chapter.**
- 17.38.310 Permit required.**
- 17.38.320 Special noticing and report requirements.**
- 17.38.330 Notice of intention to convert.**
- 17.38.340 Notice of public report.**
- 17.38.350 Rights of Mobile home owners and tenants.**
- 17.38.360 Rights of Mobile home residents.**
- 17.38.370 Right of negotiated purchase.**
- 17.38.380 Negotiation for purchase.**

**17.38.300 Applicability of chapter.** To achieve the purpose of this Chapter, all Conversion projects shall conform to the requirements of this Chapter and all other parts of this title applicable thereto provided that, if there is any conflict between the provisions of this Chapter and such other parts of this title, the provisions of this Chapter shall control.

**17.38.310 Permit required.** Conversion projects shall not be permitted in the City unless the use is permitted in such zoning district and then only with a planned unit development approval pursuant to Title 18 of the Code. PUD approval must be obtained prior to any filing of an application for a condominium conversion.

#### **17.38.3 20 Special noticing and report requirements.**

- A. In addition to any other requirements, notice of time, place, and purpose of any public hearing on an application for a planned unit development for a Conversion project shall be given to each Mobile home owner and Mobile home tenant of the proposed project hereinafter identified pursuant to the provisions of this part. In addition, a notice shall be posted at all entrances of the proposed project. Each such notice shall be printed in English and Spanish.
- B. The Director of Community Development shall mail, with postage prepaid, a copy of the staff report on an application for a planned unit development for a Conversion project to each Mobile home owner and Mobile home tenant at least fifteen (15) days before the date set for hearing thereon.
- C. Notwithstanding the preceding provisions of this section, the failure of the Director of Community Development or City Clerk to mail any notice or report, or the failure of any resident to receive the same, shall not affect in any way whatsoever the validity of any proceedings taken under this Chapter, nor of any such proceedings, nor prevent the Director, Planning Commission or City Council from proceeding with any hearing at the time and place set therefor.

#### **17.38.3 30 Notice of intention to convert.**

A. At least one hundred and twenty (120) days prior to the date of filing an application for a planned unit development for a Conversion project, the Developer shall notify, in writing, each Mobile home owner, Mobile home tenant and designated resident organization of the proposed project of his/her intention to convert, and thereafter, the Developer shall notify each person applying for rental of a Mobile home lot in the proposed project, prior to payment of any rent or deposit, of his intention to convert.

B. Said notice of intention to convert shall contain a statement that the Developer proposes a Conversion project, and for that purpose that (1) the Developer shall file an application for a planned unit development with the City of Morgan Hill, and, if applicable, that (2) the Developer shall file an application for a final public report with the California Department of Real Estate. Said notice shall also contain a statement of the rights of Mobile home owners, Mobile home tenants and residents as set forth in Sections 17.38.350, and 17.38.360, and 17.38.370 and the rights of designated resident organizations, and shall attach a copy of this Chapter 17.38.

C. Developer shall also submit evidence of notification to the California Department of Housing and Community Development of intention to convert.

**17.38.3 40 Notice of public report.** In addition to any noticing requirements imposed by the Department of Real Estate and/or the Department of Housing and Community Development, within five (5) days of receipt of the final public report on the proposed project from the California Department of Real Estate (hereinafter "final public report"), and/or an HCD approval to terminate, if applicable, the Developer shall notify each of the Mobile home owners and tenants in the proposed Conversion project of the issuance of said report. The notice shall indicate that copies of said report are available on request.

**17.38.3 50 Rights of mobile home owners and tenants.** Each Mobile home owner and Mobile home tenant of a proposed Conversion project shall have the following rights from the date of issuance of a notice of intention to convert, pursuant to Section 17.38.330, until the date indicated, if applicable, with respect to his or her tenancy:

1. The right to terminate a lease or rental agreement, without penalty, upon sixty (60) days notice to the landlord.
2. Notwithstanding the provisions of Chapter 5.36 of Title 5 of this Code, no increase in rent until termination of a lease or rental agreement pursuant to Subsection (1) of this section or until twelve months after the date of issuance of the final public report, if applicable, or expiration of the Mobile home owner's or Mobile home tenant's lease or rental agreement, whichever is longer.
3. No Unjust eviction during tenancy.
4. No coercion or retaliatory action against any such Mobile home owner or Mobile home tenant, including pressure to support, or refrain from opposing, a Conversion project.

**17.38.3 60 Rights of mobile home residents.** In the case of a Mobile home park conversion to ownership, a Mobile home resident shall have a Right of first refusal to purchase a Condominium interest or an undivided interest in a community Mobile home park, whichever is applicable. The purchase price shall be no greater than the price offered to the general public for such interest.

**17.38.3 70 Right of first negotiated purchase.** A designated resident organization shall have the

right to negotiate for purchase of a Mobile home park for which a Conversion project is proposed, prior to the commencement of any other negotiations conducted by the Developer, if written notice of the exercise of this right is provided to the Developer within one hundred and twenty (120) days of the date of issuance of the notice of intention to convert.

**17.38.3 80 Negotiation for purchase.** If a written notice has been provided to the Developer pursuant to Section 17.38.370 and within the time limit specified therein, the following procedure shall be followed:

1. Action on any planned unit development for the Conversion project shall be suspended for one hundred eighty (180) days in order that good faith negotiations can be encouraged and such steps may be taken as are reasonably likely to result in preservation of the Mobile home park and the housing opportunities therein.
2. Within fifteen (15) days of receipt of notice, the Developer shall meet with each designated resident organization which has provided such notice in order to explore the possibility of acquisition of the park by such organization.
3. Upon the request to the director by either the Developer or the designated resident organization, a mediation session shall be conducted by a mediator assigned by the city. The mediation shall be conducted within forty-five (45) days of such request.

### **Part 3**

#### **Mobile home PARK CONVERSIONS TO OWNERSHIP**

##### **Sections:**

- 17.38.400 Supplemental applications.**
- 17.38.410 Supplemental findings for planned development permit.**
- 17.38.420 Relocation and purchase assistance.**
- 17.38.430 Development standards.**
- 17.38.440 Findings for noncompliance with development standards.**
- 17.38.450 Code compliance.**
- 17.38.460 Code compliance bond.**
- 17.38.470 Effectiveness of permit.**
- 17.38.480 Recreational open space.**
- 17.38.490 Documents furnished to prospective purchasers.**
- 17.38.500 Capital contributions and warranties.**

##### **17.38.400 Supplemental applications.**

A. In addition to submittal requirements specified for planned unit development applications, a supplemental application must be submitted for every Mobile home park conversion to ownership, which shall include the following:

1. Satisfactory evidence that, at least one hundred and twenty (120) days prior to the date of filing such application, each of the Mobile home owners and Mobile home tenants within the proposed project received, pursuant to Section 17.38.340 of this Chapter, written notice



of intention to convert; and that thereafter, each person applying for rental of a Mobile home in the proposed project, prior to payment of any rent or deposit, received notice of intention to convert. In addition, satisfactory evidence of the posting of said notice at all entrances of the Mobile home park shall be submitted.

2. A declaration that, after the date of filing such application, each person applying for rental of a Mobile home or Mobile home lot in the proposed project prior to payment of any rent or deposit, shall receive, pursuant to Section 17.38.330 of this Chapter, written notification of intention to convert.

3. A boundary map showing the location of all existing easements, structures, mature and/or scenic trees, and other improvements upon the property.

4. The proposed Organizational documents and true copies of any and all documents submitted to the California Department of Real Estate and/or the Department of Housing and Community Development for the proposed Conversion project.

5. The material indicated in Subsection 4 shall be submitted subject to the following provisions:

a. The Developer shall file with the Director of Community Development a true copy of any amended, revised or additional documents submitted to the Department of Real Estate at least sixty (60) days prior to the public hearing before the Planning Commission on a planned unit development for a Conversion project.

b. The Developer shall file with the City a true copy of the final public report within ten days of issuance by the Department of Real Estate and at least ten (10) days prior to any hearing.

6. A property report describing the condition and estimating the remaining useful life of each of the following elements of each applicable structure and system situated within the project proposed for conversion, excluding Mobile homes: roofs, foundations, exterior paint, paved surfaces, mechanical systems, electrical systems, plumbing systems, sewage systems, swimming pools, sprinkler systems for landscaping, utility delivery systems, central or community heating and air conditioning systems, fire protection systems including any automatic sprinkler systems, alarm systems or standpipe systems, and structural elements. For any element whose useful life is less than five years, a replacement cost estimate shall be provided. Such report shall be prepared by an appropriately licensed contractor or registered civil or structural engineer.

7. A statement detailing the current ownership of all improvements and underlying land; the name and address of each present Mobile home park resident within the project and identification of all residents under sixteen years, all residents fifty-five (55) years and over, all residents with minor children, and all disabled residents; square footage of each Mobile home lot; the current or last rental rate for each Mobile home lot or rented Mobile home and the monthly rental rate for the preceding two years; and the monthly space vacancy over the preceding two years of each Mobile home lot proposed to be converted.

8. A timetable for conversion to a Condominium Mobile home park or Community Mobile home park.

9. Such other documents or information as the director may require to further the purposes of this Chapter. True copies of any and all documents submitted to the California Department of Real Estate and/or the Department of Housing and Community Development for the proposed conversion project.

10. A description of how the financial aspects of transfers of Mobile homes and Mobile home lots have been handled for the preceding two years.

11. The appraised market value of each Mobile home lot and the in-place value of each Mobile home in the park. The appraisal is to be made no more than ninety (90) days prior to submittal of the supplemental application. The appraiser shall be a tested, certified, and designated member of a nationally recognized appraisal Association; shall be selected by the Developer and/or Association; and shall be paid by the Developer and/or Association to make the appraisal. The appraiser shall attach to any appraisal a signed statement confirming that he or she has no direct or indirect economic interest in the park other than the receipt of the appraisal fee, the amount of which shall be stated in the disclosure statement.

12. Proof that each resident and/or owner received a copy of the appraisal.

B. Copies of the supplemental application shall be made available by the applicant upon demand at the on-site office in the proposed project, during regular business hours, to Mobile home owners and Mobile home tenants. For projects that do not have on-site offices, all Mobile home owner and tenants shall receive written notice, with a contemporaneous copy to the City, that copies of the supplemental application materials are available at the City offices.

**17.38.4 10 Supplemental findings for planned development permit.** A planned development permit may be issued for a Mobile home park conversion to ownership only if the Planning Commission finds that the applicant has provided a program of relocation, rental assistance, purchase assistance or other assistance pursuant to Section 17.38.430 of this Chapter to mitigate the impact of the conversion on displaced Mobile home owners and Mobile home tenants, and that Mobile home residents shall have the Right of first refusal specified in Section 17.38.370.

**17.38.4 20 Relocation and purchase assistance.** The City Council shall make any planned unit development which may be granted for a Mobile home park conversion to ownership subject to a condition requiring a plan of relocation and purchase assistance for displaced Mobile home owners and Mobile home tenants within the proposed project. Such a plan may include the following:

1. Information to be provided to each Mobile home owner within the proposed project:  
a. A list of known available Mobile home lots and spaces and their Mobile homes, if applicable, in Santa Clara, San Benito, Monterey, and Santa Cruz counties, including any written commitments from Mobile home park owners willing to accept displaced Mobile home owners, and whether and under what criteria such owners will accept used Mobile homes moving into their park.

b. Estimates from two moving companies as to the per mile costs of moving Mobile homes of various sizes including, but not limited to, tear down and set up of coaches.

2. Measures to mitigate the adverse impacts of conversion upon Mobile home owners and Mobile home tenants. Such mitigation measures shall benefit Mobile home owners and Mobile home tenants of the Mobile home park from the date the application for the planned unit development for the proposed Conversion project is filed with the city, or from the date on which notices to vacate are mailed to Mobile home owners and tenants, whichever is earlier. Mitigation measures may include but are not limited to:

a. Moving expenses for furniture and personal belongings to a new residence in Santa Clara, San Benito, Monterey, or Santa Cruz County.

b. Provision for payment of any or all portions of the cost of physically moving a Mobile home to a new site in Santa Clara, San Benito, Monterey, or Santa Cruz County, including, but not limited to, tear down and set up.

c. For those who move to a multiple or two-family dwelling, provision of a rent subsidy for up to twenty-four (24) months. Rent shall not exceed the fair market rent for new construction and substantial rehabilitation for the Santa Clara County area as established by the U. S. Department of Housing and Urban Development. "Rent subsidy" is the difference between the rent of a comparable multiple or two-family dwelling and the rent of the Mobile home space or Mobile home on the date of the notice of intention to convert.

d. Payment of the difference of rent between the old and new Mobile home park spaces for up to twenty-four months.

e. Purchase of the Mobile home at its in-place value, as determined by a tested, certified, and designated member of a nationally recognized appraisal Association. "In-place value" includes a presumption of continued and uninterrupted use of the space and coach in the current park setting, and includes the value of any accessory structures whose installation has been approved by Mobile home park management, such as a porch or a carport. The appraisal is to be made no more than sixty (60) days prior to its submittal, and the value shall be established as of the date of approval by the Planning Commission of the plan.

f. Extended leases and rental agreements (commencing at the conclusion of the right of continued tenancy period under Section 17.38.360(C)) for Mobile home owners and Mobile home tenants who are disabled, or aged fifty-five (55) or over, and/or of Low income, and/or for Mobile home owners and Mobile home tenants with minor children. No Mobile home owner or Mobile home tenant covered by any such extended lease or rental agreement shall be unjustly evicted. "Extended lease or rental agreement" is a lease or rental agreement whose expiration date is extended at least ninety (90) days.

g. A provision for setting aside a certain number of rental spaces for Mobile home owners and Mobile home tenants who are disabled, and/or aged fifty five or over, and/or Low income, and/or for Mobile home owners and Mobile home tenants with minor children. The set-aside figure shall be based on an analysis of the inventory of tenants and tenant groups, and shall be subject to review and approval by the City.

**17.38.4 30 Development standards.** To achieve the purposes of this Chapter, Mobile home park conversion to ownership projects shall conform to the following development standards:

1. The off-street parking requirements shall be one and one-half parking spaces for each Mobile home lot. One such space per Mobile home lot shall be assigned. However, a variance may be granted to maintain pre-existing or current parking ratios within the park.
2. The consumption of gas and electricity within each Mobile home lot shall be separately metered so that the owner can be billed separately for each utility. A water shut-off valve shall be provided for each Mobile home lot or for each plumbing fixture.
3. Each Mobile home lot shall have its own panel board for all electrical circuits which serve the Mobile home.
4. All standards contained in Section 18.30.100 of this Code shall be adhered to unless an exception to those standards is approved by the City Council pursuant to Section 18.30.110.

**17.38.4 40 Findings for noncompliance with development standards.** An application for a planned unit development for a Mobile home Conversion project under this part which does not comply with all of the applicable development standards stated in Section 17.38.430 may, but shall not under any circumstances be, required to be approved, and a planned unit development may be issued therefor if the Planning Commission finds that:

1. Strict application of the development standards set forth in said Section 17.38.430 would create an unreasonable economic hardship due to (but not limited to) the size, shape, location or surroundings of the subject property or the buildings situated thereon, but expressly excluding consideration of personal circumstances of the Developer; and
2. A planned unit development for the Conversion project which is not in conformance with such development standards, subject to such conditions as may be imposed thereon:
  - a. Will provide for substantial compliance with such development standards;and
  - b. Will incorporate mitigating features which further the purposes of this Chapter.

**17.38.4 50 Code compliance.** The proposed Conversion project shall comply with all applicable City, county, and state codes and regulations regarding health and safety. If said project does not comply with said codes and said regulations at the time of approval of a planned unit development for the project, a code compliance bond shall be submitted as required in Section 17.38.460.

**17.38.4 60 Code compliance bond.** If a proposed Mobile home Conversion project does not comply with provisions of Section 17.38.450 and/or the building official identifies items to be corrected pursuant to said section, any planned unit development created pursuant to this Chapter shall require the Developer to furnish a bond in an amount equal to the reasonable estimated cost of code compliance. Said bond shall run in favor of individual purchasers and the Association. Said bond shall provide for reasonable attorney's fees in the event of default by the principal.

**17.38.4 70 Effectiveness of permit.** A planned unit development created under this Chapter for a Mobile home Conversion project may be created prior to the time compliance has been made with

the said codes and said regulations as herein above provided in Section 17.38.450, but such PUD shall not become effective unless and until compliance has been made as required.

**17.38.4 80 Recreational open space.** Without limiting the generality of the provisions relating to conditions which may be imposed upon a development permit, the Planning Commission may make any planned unit development for conversion to a Mobile home Conversion project subject to a condition requiring Recreational open space in a manner and to the extent it deems reasonably necessary.

**17.38. 490 Documents furnished to prospective purchasers.** The Developer shall furnish each prospective purchaser of an interest in a Condominium Mobile home park or community Mobile home park pursuant to a Conversion project a true copy of the planned unit development issued under this Chapter and of each document required by state law and the regulations of the California Department of Real Estate to be provided to such prospective purchaser.

**17.38.500 Capital contributions and warranties.** Without limiting the generality of the provisions relating to conditions which may be imposed upon a planned unit development, the Planning Commission may make any planned unit development development plan which may be granted under this part subject to conditions requiring the following:

1. A capital contribution provided by the Developer to the Association for the deferred maintenance of the Common area, and the deferred maintenance or replacement of any of the elements described in the property report which are owned or maintained by the Association, pursuant to Section 17.38.400. Information available pursuant to Subsection A.6 of said section regarding the estimated replacement cost of those elements whose useful life is less than five (5) years may be used in determining the amount of such contribution.

2. A one-year warranty provided free of charge by the Developer to the Association for those systems described in the property report, as herein above specified, which are owned or maintained by the Association. Such warranty need not cover those systems which may be covered by a substantial capital contribution by the Developer for deferred maintenance.

## **Part 4**

### **Mobile home PARK CONVERSIONS OF USE**

#### **Sections:**

**17.38.600 Supplemental application.**

**17.38.610 Supplemental findings for planned development permit.**

**17.38.620 Relocation and purchase assistance.**

#### **17.38.600 Supplemental application.**

A. A supplemental application must be submitted for a Mobile home park conversion of use which shall include the following:

1. Satisfactory evidence that, at least one hundred and twenty (120) days prior to the date of filing such application, each Mobile home owner and Mobile home tenant within the

proposed project received, pursuant to Section 17.38.330 of this Chapter, written notice of intention to convert; and that thereafter, each person applying for rental of a Mobile home or Mobile home lot in the proposed project, prior to payment of any rent or deposit, received notice of intention to convert. In addition, satisfactory evidence of the posting of said notice at all entrances to the Mobile home park shall be submitted.

2. A declaration that, after the date of filing such application, each person applying for rental of a Mobile home or Mobile home lot in the proposed project prior to payment of any rent or deposit, shall receive, pursuant to Section 17.38.330 of this Chapter, written notification of intention to convert.

3. A statement detailing the current ownership of all improvements and underlying land; the name and address of each present Mobile home park resident and /or owner within the project and identification of all residents under sixteen (16) years, all residents fifty-five (55) years and over, all residents with minor children, and all disabled residents; square footage of each Mobile home lot; the current or last rental rate for each Mobile home lot and rental rate for the preceding two years; and the monthly space vacancy over the preceding two years of each Mobile home lot proposed to be converted.

4. A timetable for conversion of the Mobile home park use.

5. The appraised market value of each Mobile home lot and the in-place value of each Mobile home in the park. The appraisal is to be made no more than ninety (90) days prior to submittal of the supplemental application. The appraiser shall be a tested, certified, and designated member of a nationally recognized appraisal Association; shall be selected by the Developer and/or Association; and shall be paid by the Developer and/or Association to make the appraisal. The appraiser shall attach to any appraisal a signed statement confirming that he or she has no direct or indirect economic interest in the park other than the receipt of the appraisal fee, the amount of which shall be stated in the disclosure statement.

6. A description of how the financial aspects of transfers of Mobile homes and Mobile home lots have been handled for the preceding two years.

7. True copies of any and all documents submitted to the California Department of Real Estate and/or the Department of Housing and Community Development for the proposed conversion project.

8. Proof that each resident and/or owner received a copy of the appraisal.

B. Copies of the supplemental application shall be made available upon demand at the on-site office in the proposed project, during regular business hours, to Mobile home owners and Mobile home tenants. For projects that do not have on-site offices, all Mobile home owner and tenants shall receive written notice, with a contemporaneous copy to the City, that copies of the supplemental application materials are available at the City offices.

**17.38.610 Supplemental findings for planned unit development.** A planned unit development may be issued for a Mobile home park conversion of use only if the director or Planning Commission finds that the applicant has provided a satisfactory program of relocation, rental assistance, purchase assistance or other assistance pursuant to Section 17.38.620 of this Chapter to mitigate the conversion on displaced Mobile home owners and Mobile home tenants.

**17.38.620 Relocation and purchase assistance.** The Director, Planning Commission or the City

Council shall make planned unit development which may be granted under this Chapter for Mobile home park conversion of use subject to a condition requiring a plan of relocation and purchase assistance for Mobile home owners and Mobile home tenants within the proposed project. Such a plan may include the following:

1. Information to be provided to each Mobile home owner within the proposed project:
  - a. A list of known available Mobile home lots in Santa Clara, San Benito, Monterey, and Santa Cruz counties, including any written commitments from Mobile home park owners willing to accept displaced Mobile home owners., and whether and under what criteria such owners will accept used Mobile homes moving into their parks.
  - b. Estimates from two moving companies as to the per mile costs of moving Mobile homes of various sizes including, but not limited to, tear down and set up of coaches.
2. Measures to mitigate the adverse impacts of conversion upon Mobile home owners and Mobile home tenants. Such mitigation measures shall benefit Mobile home owners and Mobile home tenants of the Mobile home park from the date the application for the planned unit development for the proposed Conversion project is filed with the city, or from the date on which notices to vacate are mailed to Mobile home owners and Mobile home tenants, whichever is earlier. Mitigation measures may include but are not limited to:
  - a. Moving expenses for furniture and personal belongings to a new residence in Santa Clara, San Benito, Monterey, or Santa Cruz County.
  - b. Provision for payment of any or all portions of the cost of physically moving a Mobile home to a new site in Santa Clara, San Benito, Monterey, or Santa Cruz County, including, but not limited to, tear down and set up.
  - c. For those who move to a multiple or a two-family dwelling, provision of a rent subsidy for up to twenty-four months. Rent shall not exceed the fair market rent for new construction and substantial rehabilitation for the Santa Clara County area as established by the U. S. Department of Housing and Urban Development. "Rent subsidy" is the difference between the rent of the multiple or two-family dwelling and the rent of the Mobile home space or Mobile home on the date of the notice to convert.
  - d. Payment of the difference of rent between the old and new Mobile home park spaces for up to twenty-four months.
  - e. Purchase of the Mobile home at its in-place value, as determined by a tested, certified, and designated member of a nationally recognized appraisal Association. "In-place value" includes a presumption of continued and uninterrupted use of the space and coach in the current park setting, and includes the value of any accessory structures whose installation has been approved by Mobile home park management, such as a porch or a carport. The appraisal is to be made no more than ninety (90) days prior to its submittal, and the value shall be established as of the date of approval by the Planning Commission of the plan. In-place value includes the value of any accessory structures whose installation has been approved by Mobilehome park management, such as a porch or a carport. The appraisal is to be made no more than sixty (60) days prior to its submittal.
  - f. Extended leases or rental agreements (commencing at the conclusion of the right of continued tenancy period under Subdivision 2 of Section 17.38.350) for Mobile home owners and Mobile home tenants who are disabled, and/or aged fifty-five (55) or over, and/or of Low income, and/or for Mobile home owners and Mobile home tenants with minor children. No Mobile home owner or Mobile home tenant

covered by any such extended lease or rental agreement shall be unjustly evicted. "Extended lease or rental agreement" is a lease or rental agreement whose expiration date is extended at least ninety days.

**SECTION 2. Severability.** If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 3. Effective Date; Publication.** This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 20<sup>th</sup> Day of August 2003, and was finally adopted at a regular meeting of said Council on the 3<sup>rd</sup> Day of September 2003, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 3<sup>rd</sup> Day of September, 2003.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

### **COMMUNITY INDOOR RECREATION CENTER**

### **APPROVAL OF CONCEPTUAL SITE DESIGN**

#### **RECOMMENDED ACTION(S):**

- 1) Approve Subcommittee Recommendation for Programming and Conceptual Site Design
- 2) Approve Sports Management Group Consultant Services Agreement for Business and Economic Analysis

**EXECUTIVE SUMMARY:** On May 28, 2003 Council approved a process of involving all appropriate interests in the Design Review Process for the Community Indoor Recreation Center. Council directed staff to expand the two-Council member Subcommittee (Council members Hedy Chang and Greg Sellers) to include two members of the Parks and Recreation Commission, one member each from the Senior and Youth Advisory Committees, and one member from the Architectural Review Board.

On June 25, 2003 Council approved the Subcommittee appointments. Noll & Tam Architects began the Preliminary Design Process in June followed by meetings in July held with the Subcommittee to finalize programming and develop a final Conceptual Site Design. Conceptual site design involved the layout of the site including access/traffic circulation routes and the placement/orientation of the proposed building on the site.

The Subcommittee met on July 14, 2003 and again on July 23, 2003 to form the recommendations listed below. The Parks and Recreation Commission will hold a workshop on August 12, 2003 to discuss the Programming and Conceptual Site Design and the Development Review Committee (DRC) will review the site plan on August 13, 2003. Staff also met with the Youth and Senior Advisory Committees and the Architectural Review Board to solicit their input. DRC, Parks and Recreation Commission and Committee discussion points will be conveyed to Council verbally at the Council meeting.

#### **PROGRAMMING**

Exhibit A is attached providing a Programming History, explanation of base components, and programming spaces list.

#### **CONCEPTUAL SITE DESIGN**

Exhibit B contains a list of final comments by the Subcommittee relative to the Subcommittee's recommendation for a conceptual site design entitled "Scheme B".

Council's approval tonight for the above Programming Spaces and Conceptual Site Design is needed to proceed with Schematic Design per the project schedule. Exhibit C is the project schedule approved by Council at its May 28, 2003 meeting.

Attached also is a Proposal from the Sports Management Group to provide Business and Economic Analysis for the IRC at a cost of \$65,000. These services include: Planning Support, Operating Budget Analysis, Market Analysis, and Revenue Development. Staff has reviewed each element of the work scope and recommends Council's approval.

**FISCAL IMPACT:** This project is funded as part of the CIP Budget. Sufficient funds exist for the proposed Business and Economic Analysis Services to be provided by the Sports Management Group in the amount of \$65,000.

**Agenda Item # 35**

**Prepared By:**

\_\_\_\_\_  
**Dep Dir  
PW/Operations**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: August 20, 2003***

**Agenda Item # 36**

**Prepared By:**

**(Department Director)**

**Submitted By:**

**City Manager**

**TITLE:** Urban Limit Line (Greenbelt) Study Status Report

**RECOMMENDED ACTION:** The City Council should review and comment on the status report; no Council action is recommended

**EXECUTIVE SUMMARY:** On February 5, 2003 the City Council appointed an Urban Limit Line (Greenbelt) Study Advisory Committee including Mayor Kennedy as Chair, and Mayor Pro Tempore Chang. City staff indicated that the Council would receive Committee meeting minutes and periodic status reports for review and discussion. This is the first status report.

The Advisory Committee has met on March 12<sup>th</sup>, April 14<sup>th</sup>, May 13<sup>th</sup>, June 9<sup>th</sup>, July 14<sup>th</sup> and August 11<sup>th</sup>. Minutes for the first five meetings are attached. The first four meetings were devoted primarily to identification of goals and values, and receipt and review of environmental and City and County land use planning and zoning information critical to making decisions on the location on an Urban Limit Line (ULL). The July meeting included presentations by advocates of urban residential development of a portion of the area bounded by Edmundson, DeWitt, Spring and Sunset and creation of an industrial park southeast of Tennant Avenue and Highway 101. The Morgan Hill General Plan identifies both of these issues for attention in this Study.

The initial Committee discussions identified a fundamental issue: is the Study to establish an Urban Limit Line and/or a Greenbelt? The establishment of an Urban Limit Line would demark areas, to be identified in the City's General Plan, that would not be available for future urban development for at least an extended time period (i.e. 50 or more years). The Limit Line would supplement the City's Urban Growth Boundary (UGB), which establishes areas where growth is projected to occur within the next twenty years. The Morgan Hill General Plan has Policies and Actions that call for creation of a Greenbelt. The definition of Greenbelt includes acquisition, by governmental and/or non-profit agencies, of land or conservation easements that limit future use of land to non-urban activities (e.g. agriculture). The Committee is reviewing areas outside of the City's UGB to determine recommendations as to which areas should be outside of an ULL and of those areas, which lands should be part of a Greenbelt. A Committee recommendation to establish Greenbelt areas is anticipated. The August 11<sup>th</sup> meeting focused on lands within the northern section of the City's Sphere of Influence. The Committee's September 15<sup>th</sup> and 29<sup>th</sup> meetings will focus on other areas that are outside of the UGB.

The Project Schedule anticipates Committee identification of a Preferred Alternative by the end of September. Environmental review work, other than the environmental data collection that has occurred, cannot begin until the Committee establishes the Preferred Alternative. Staff initially estimated that the Study would be completed in February or March of 2004. That schedule may still be possible. An updated schedule will be prepared after the September meetings.

If establishment of a Greenbelt is eventually approved by the Council, implementation would require a follow up study to establish land acquisition priorities, procedures and funding mechanisms. City financial involvement should be assumed in a Greenbelt implementation program.

**FISCAL IMPACT:** Review of the status report does not have a fiscal impact.



## **REDEVELOPMENT AGENCY**

**MEETING DATE:** *August 20, 2003*

**Agenda Item # 37**

**Prepared and  
Approved By:**

\_\_\_\_\_  
**BAHS Manager**

**Submitted By:**

\_\_\_\_\_  
**Executive Director**

### **MORGAN HILL PLAZA REPOSITIONING STRATEGY**

**RECOMMENDED ACTION(S):** 1) Accept the Morgan Hill Plaza Repositioning Strategy; and 2) Establish Agency objectives for Morgan Hill Plaza; and 3) Direct the City's Economic Development Subcommittee to provide direction to the Agency on how to proceed.

**EXECUTIVE SUMMARY:** In light of information that Albertson's has been searching for a relocation site the Agency has become increasingly concerned about a hastened decline of Morgan Hill Plaza (Plaza), located at the south-west corner of Monterey Road and Dunne Avenue. In October 2002, the Agency retained Conley Consulting Group (CCG) to develop a strategy for repositioning the Plaza. CCG conducted interviews with the property owners, tenants and other stakeholders; reviewed current market conditions; spoke with retail brokers familiar with the south county area; and assessed the Plaza in terms of its potential as a viable re-repositioning opportunity. From this research, CCG prepared the attached strategy document which identifies four alternative strategies for the Plaza: 1) Redevelop for Private Uses; 2) Redevelop for Public Uses; 3) Reconfigure Existing Retail Center; and 4) Facelift.

Under Alternative 1, the Agency would acquire either the entire Plaza site or acquire one to two key parcels and issue a Request for Proposals for redevelopment to the private sector. If the Agency had control of the entire site, redevelopment could include a new retail center, a retail/commercial mixed-use center, or a retail/housing mixed-use development. With ownership of either one or two key parcels, the Agency would have the ability to influence tenanting of the Plaza. This variation could also include the relocation of the 8-unit apartment building and acquisition of the gas station. Alternative 2 calls for the Agency/City to redevelop the property for public uses (e.g., City Hall, a new library, etc.). Together with the City's new Community and Cultural Center, this alternative would create a new civic center at the southern entry to the downtown. Alternative 3 would have the Agency help remove the gas station, relocate the apartment complex, and reconfigure the existing retail spaces to improve access, parking, and landscaping, as well as update the facades. This approach could make the Plaza more attractive to private investment. In Alternative 4 the Agency would provide financial incentives to the property owners for cosmetic improvements.

Before deciding how to proceed, staff recommends that the Agency first determine its objectives for the Plaza (e.g., redevelopment of the entire site, cosmetic improvements, public investment, if any, etc.), then request specific recommendations from the City Council's Economic Development Committee. The Agency could instead select a preferred alternative and request that CCG proceed with the pro forma analysis and conceptual design. Or, in light of Agency's limited economic development resources, it could decide to take no action and "wait and see" if the projects resulting from the Downtown Request for Concepts and the Police Station Request for Proposals will act as a sufficient economic catalyst for the Plaza.

**FISCAL IMPACT:** None at this time.